

**CONFIRMATION HEARING ON FEDERAL  
APPOINTMENTS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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NOVEMBER 18, 2020

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**Serial No. J-116-2**

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Printed for the use of the Committee on the Judiciary



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## **CONFIRMATION HEARING ON FEDERAL APPOINTMENTS**

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**WEDNESDAY, NOVEMBER 18, 2020**

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

The Committee met, pursuant to notice, at 10:04 a.m., in Room SD-106, Dirksen Senate Office Building, Hon. Lindsey O. Graham, Chairman of the Committee, presiding.

Present: Senators Graham [presiding], Lee, Hawley, Tillis, Ernst, Kennedy, Blackburn, Durbin, Whitehouse, Blumenthal, and Hirono.

Also present: Senators Alexander, Scott, Young, and Braun.

### **OPENING STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Chairman GRAHAM. Good morning. We have, I think—how many?—four district judges and one circuit judge? Is that right?

Three claims and one circuit. Five judges to have hearings about. I will turn it over to Senator Durbin to say anything he would like, and we will move forward.

### **OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Mr. Chairman, I don't believe you set the agenda for the Committee. I believe you do it in consultation with leadership?

Chairman GRAHAM. I think so, yes.

Senator DURBIN. And I am sure you don't set the agenda for the floor. But it still is amazing to me that with the challenges we are facing in this country with this pandemic, and the President refusing to recognize that he lost the election, that in response to those two major issues we are continuing to hold hearings as if nothing is going on outside of this building.

Last week we held the fourth hearing this year to try to determine whether the inspector general's findings about the Russia investigation in the 2016 election was appropriate. Yesterday we held a hearing on whether social media is unfair to Republicans. Today we are holding a hearing on a lame duck President's judicial nominations. No reflection at all on the nominees, but what a sad State of affairs.

In the 116th Congress, this Committee has focused on judges, President Trump's grievances, and little else. A Senate Judiciary Committee is a terrible thing to waste.

Chairman GRAHAM. Thank you. With that we have Senator Alexander, remotely, who will introduce Mr. Chuck Atchley and Ms. Katie Crytzer—is that right?—and Senator Blackburn, and I know you will too, for the Eastern District of Tennessee. We have Mr. Joseph Dawson, who will be introduced by Senator Scott from South Carolina, and Senators Young and Braun remotely will introduce Tom Kirsch, a nominee for the U.S. Court of Appeals for the Seventh Circuit. Senator Blackburn—

[Audio resumes.]

Chairman GRAHAM [continuing]. As I indicated, will join Senator Alexander for our Tennessee nominees. And I will introduce Zach Somers, the nominee for Federal Appeals.

And why don't we start with Senator Scott.

**STATEMENT OF HON. TIM SCOTT,  
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator SCOTT. Thank you, Mr. Chairman, and good morning to all Members of the Judiciary Committee who are here in person, as well as listening virtually.

It is my privilege to endorse the nomination and support the nomination of Mr. Joseph Dawson III, to serve as a United States district judge for the District of South Carolina. I'm blessed to have known Joe Dawson for at least 17 years. He's been married to his wife for 29 years. He has three children 15, 16, and 27. I start there because as good of an attorney as he is, he's a better husband. He's a better father. He's an excellent person of high integrity, deep faith, and strong character.

The qualities that I like most about Joe are, having been the chairman of County Council on four different occasions, Joe is the type of attorney who doesn't tell you what you want to hear. He tells you the law. An objective perspective, it's hard to find sometimes, especially when you are in charge of the organization. We disagreed on a number of occasions and unfortunately Joe was right more than I was, and please don't tell him I said that, though he is in the room.

Joe has an outstanding record as a personal attorney running his own law practice helping small businesses, working with the county as the county attorney, overseeing operations of everything that impacts the county from a legal perspective. I'm confident that Joe is ready and willing to answer any and all of your questions about his experience, his judicial philosophy, and his unquestionable qualifications to serve as a Federal judge.

Joe is an outstanding individual who has worked to give back to his community and cultivated a successful career in law. I would like to share some of his achievements with you all today.

Joe received his bachelor of arts from The Military College of South Carolina, The Citadel; his law degree from the University of South Carolina School of Law; and if my alma mater had a law school I'm sure he would have chosen Charleston Southern instead, but we don't, so he didn't.

Joe is currently working as the county attorney, as I've already said. He's also been dedicated to his community by serving pro bono as a guardian ad litem in family court cases. He's also met with disadvantaged and minority communities. He's worked on

civic associations and advised them on land use strategies to better their communities. He has served his country for more than 10 years as a JAG officer. Along with all of his responsibilities, he still balances his responsibilities to his church and to his family as his primary responsibilities. His greatest joy is being a husband and a father.

You will certainly, after hearing from him, know that he is objective, that he is clear, he is forthright, and hard to misunderstand.

And I want to be clear that I am here because I actually respect and appreciate most his competency, his character, and his exceptional dedication to the law. It is what he loves.

If confirmed, Joe will also be the only African American man currently serving on South Carolina's District Court. It's nominations like Joe's that illustrate both the talents and diversity of South Carolina. Joe will make an outstanding addition to the Federal bench, and I am pleased to be able to recommend him without hesitation.

Thank you, Mr. Chairman.

Chairman GRAHAM. Well, I just want to add my—I agree with everything Senator Scott said. Mr. Dawson will be a great addition to the Federal bench in South Carolina, and I hope my colleagues will look favorably upon him. Mr. Dawson, congratulations to you and your family. This is a big day in your life, and Senator Scott has been a great advocate for your cause, and I think he has a compelling case to make to the Committee in the Senate, and I look forward to seeing this nomination confirmed.

Thank you, Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman.

Chairman GRAHAM. Now we'll go to our friends in Tennessee, starting with Senator Alexander, then Senator Blackburn.

Are you with us, Senator Alexander?

Senator ALEXANDER. I am.

**STATEMENT OF HON. LAMAR ALEXANDER,  
A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator ALEXANDER. Thank you, Mr. Chairman—can you hear me?

Chairman GRAHAM. Yes, sir.

Senator ALEXANDER [continuing]. And Senator Durbin and Members of the Committee, including my colleague, Senator Blackburn. Thanks for giving me the opportunity to speak on behalf of Chuck Atchley and Katherine Crytzer to serve as district judges for the Eastern District of Tennessee.

First, a short story about the confirmation process. Last year I talked to Harry Wellford of Memphis. He is 96 years old and he is a retired Federal judge. He told me that right after the election in November 1970, Senator Howard Baker called him and asked him if he wanted to be a Federal judge, and he said, "Let me think about it." He called back in about a week, said yes, and here's what happened.

On November 24, he was nominated by the President. On December 10, this Committee considered his nomination and he was confirmed by a voice vote the next day, December 11, in the full Senate.

Here's the point of my story. Our power to advise and consent is perhaps our best-known responsibility. Every President has up to 1,400—1,400—major appointments, nominations, that require the Senate's advice and consent. These are the people who run our Executive and Judicial branches. Harry Wellford's experience 50 years ago is a lot different than what happens today. Lately we've been confirming about five nominations a week. You don't have to go very far in math to figure out that it would take a long time for a new President to stand up a Government at that rate. But it wasn't so long ago when Federal district judges, and most Presidential nominees, were promptly approved by voice vote. Arguments were reserved for major nominations or controversial ones.

In 2011, 2012, and 2013, several of us, including the now Democratic leader, Senator Schumer, worked together in a bipartisan way to try to fix the Presidential nomination process. We made some important changes, but it soon fell apart. What we needed, we found, was not just a change in rules but a change in behavior.

And here's my point. Now would be a good time to change the behavior and get the confirmation process back on track.

Chuck Atchley's roots in Tennessee go back to the Revolutionary time. In 20 years he's represented East Tennesseans in the Federal court system. There is no more widely respected or experienced Federal prosecutor in East Tennessee than Chuck Atchley. He's tried more than 100 cases. He's the First Assistant U.S. Attorney. I've spoken with every judge in East Tennessee. They all give him high marks, all the Federal judges.

The late Pam Reeves, President Obama's nominee, who was chief judge and who died just 2 months ago, told me before that, "Chuck Atchley," she said, "is ready to be a Federal judge."

What I found is Mr. Atchley's nomination is supported by his colleagues, his superiors, and even his opposing counsel. Mr. Chairman, I'd like to submit for the record three letters I have received, one from Mr. Atchley's colleagues in the U.S. Attorney's Office, one from several defense attorneys, one signed by U.S. Attorney Doug Overbey and two former U.S. Attorneys for the Eastern District.

Chairman GRAHAM. Without objection.

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

Senator ALEXANDER. One of these colleagues wrote me a letter and said, "As a Federal prosecutor, I'm apolitical. I know Chuck Atchley to be an honorable person of good character."

Mr. Chairman, I also support Katherine Crytzer who appears before the Committee today. She is an East Tennessee native. She graduated from Middle Tennessee State University summa cum laude. She has served for the last 6 years at the Justice Department. She's currently the Acting Deputy Assistant Attorney General for the Office of Legal Policy, and before that she served as Assistant United States Attorney for the Eastern District of Kentucky.

She was previously nominated to be the Inspector General for the TVA. I supported her for that position. Should she be confirmed by the Senate, she would be only the second woman to be a Federal district judge in East Tennessee.

Mr. Chairman, there are two vacancies in the Eastern District of Tennessee. Caseloads are rising rapidly. According to the Federal



Court Management Statistics, the Eastern District's criminal docket is the 17th largest in the United States. I believe the Senate should confirm nominees of good character, good temperament, high intelligence, and a high respect for the law. I believe that Mr. Atchley and Ms. Crytzer have those characteristics.

I thank you for the Committee's time and I urge you to recommend these two "well qualified" individuals to the Senate promptly. Thank you.

Chairman GRAHAM. Thank you, Senator Alexander. Senator Blackburn.

**OPENING STATEMENT OF HON. MARSHA BLACKBURN,  
A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator BLACKBURN. Thank you, Mr. Chairman, and I am so pleased to join Senator Alexander in introducing our two outstanding nominees today. And Senator Alexander has just laid out to you why it is so important that for the Eastern District that we get these nominees confirmed and get them to work on the bench in Tennessee. And we're just so pleased to bring these two nominees forward.

First is Katie Crytzer, who is President Trump's nominee to be a U.S. District Judge for the Eastern Division of Tennessee. She will be filling the Knoxville seat, as Senator Alexander said, that was held by the late Chief Judge Pam Reeves. Judge Reeves was the first woman to serve as a district court judge in the Eastern District of our State, and when Katie is confirmed she will become the second. Katie will uphold the same principles of fairness and integrity that marked Judge Reeves' service, and she will likewise serve as an inspiration for all female lawyers. Judge Reeves is remembered so very well for the way she mentored and charted a path for women in the legal professions in our State.

After growing up in Knoxville and attending Farragut High School, Katie graduated summa cum laude from Middle Tennessee State University. She received her JD magna cum laude from Antonin Scalia Law School at George Mason University. She went on to clerk for Judge Raymond Gruender on the U.S. Court of Appeals for the Eighth Circuit, and then practiced law in our Nation's capital at Kirkland & Ellis.

Katie then joined the Department of Justice as an Assistant U.S. Attorney, where she focused on the prosecution of health care fraud and drug crimes. While a Federal prosecutor, she litigated criminal and civil cases, representing the United States of America in multiple trials. Katie now serves our country as the Principal Deputy Assistant Attorney General in the Office of Legal Policy. She has led various DOJ policy initiatives on violent crime, the opioid epidemic, religious liberty, and regulatory reform.

I am delighted that after all of her hard work on behalf of the citizens of this country that she is being elevated to a judgeship.

I next introduced to the Committee another fellow Tennessean, Charles Atchley. He does go by Chuck, and he is being nominated to the Chattanooga seat on the U.S. District Court for the Eastern Division of Tennessee. He has spent nearly two decades serving as a Federal prosecutor with a remarkable record in that district.

He is a lifelong Tennessean and a direct descendant of a Revolutionary War veteran, Thomas Atchley, who settled in Sevier County, Tennessee, in 1785. Yes, his roots in Tennessee run deep and long.

He received his BA from the University of Tennessee and his JD from Samford University's Cumberland School of Law. After law school, Chuck briefly worked in private practice before serving as an Assistant District Attorney General. Chuck joined the U.S. Attorney's Office in 2001 as a Federal prosecutor in the Criminal Division. He supervised the General Crimes Section before he was elevated to oversee the National Security Section. In that role, he prosecuted serious crimes of corruption, conspiracy, and threats to the Nation. Chuck has served as the first Assistant U.S. Attorney since 2018.

We appreciate and honor his long career of public service. His record demonstrates his wealth of experience and his strong work ethic. Chuck has prosecuted countless cases and dedicated much of his time and energy to seeing justice being served.

I hope we will move each nominee through the Committee expeditiously and get them confirmed promptly. Katie and Chuck, I look forward to seeing what you will accomplish. Congratulations.

Chairman GRAHAM. Thank you. Both have been well introduced. Thank you very much, Senators Alexander and Blackburn.

Now to our good friends from Indiana. Senator Young.

**STATEMENT OF HON. TODD YOUNG,  
A U.S. SENATOR FROM THE STATE OF INDIANA**

Senator YOUNG. Well, thank you, Chairman Graham and Members of the Committee. Several weeks ago I had the privilege of appearing before this Committee to introduce now Justice Amy Coney Barrett. Her elevation to the Supreme Court of the United States created a vacancy on the United States Court of Appeals for the Seventh Circuit, one of two such vacancies in the country. So it's my honor today to introduce someone who has the character, the temperament, and the experience required to fill such a seat.

Thomas Kirsch currently serves as the United States Attorney for the Northern District of Indiana, a position he's held since being confirmed by voice vote just more than 3 years ago. He previously served as Assistant U.S. Attorney for the Northern District from 2001 through 2008, which included a 1-year assignment here in Washington with the Office of Legal Policy at the U.S. Department of Justice.

Mr. Kirsch later became a partner at Winston and Strawn, where he argued cases in trial and appellate courts across the country. He clerked for Hon. Judge John Tinder in the Southern District of Indiana, and he's received numerous recognitions and awards for his service, including being named a Fellow of the American College of Trial Lawyers.

Mr. Kirsch graduated from Indiana University, and Mr. Chairman, you no doubt know this school is a college football powerhouse these days.

Chairman GRAHAM. Are you here to help this guy or not?

[Laughter.]

Senator YOUNG. And in 1996, receiving his education there, later attending Harvard Law School in 1999, graduating with a Judicial Doctorate.

He and his wife, Becky, have been married for 20 years. They are the proud parents of twins, Jack and Nick, who are sophomores, and William, who is in the eighth grade. As a father of four, including my own set of twins, I have deep respect for how he and Becky have raised their boys while serving the people of Indiana.

When I interviewed Mr. Kirsch for the U.S. Attorney position it was pretty clear to me that this is the type of individual that the people of Indiana wanted in their corner. He's a man of character. He's a man of integrity. He believes in the rule of the law, and he understands that the role of judges is to apply the law and Constitution as written. It, of course, is not to legislate from the bench.

Notably, when evaluating his qualifications to serve on the U.S. Court of Appeals for the Seventh Circuit, the American Bar Association rated Mr. Kirsch as "well qualified," the highest rating a Federal judicial nominee can receive.

Based on his qualifications, his experience, and his temperament, I believe Tom Kirsch is the type of nominee who can and should receive bipartisan support from this Committee and the full U.S. Senate.

Thank you so much, Mr. Chairman.

Chairman GRAHAM. Thank you, and just remember the word "re-match," Okay?

[Laughter.]

Senator Braun.

**STATEMENT OF HON. MIKE BRAUN,  
A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator BRAUN. Thank you, Chairman Graham and Ranking Member Feinstein. It's my honor today to introduce a fellow Hoosier who's shown throughout his impressive career that he has what it takes to excel on the U.S. Court of Appeals for the Seventh Circuit. As Todd said, he is a lifelong Hoosier, a graduate of Indiana University, and most importantly, he moved back home after graduating from Harvard Law School.

As Assistant U.S. Attorney to Joseph Van Bokkelen, Mr. Kirsch worked to take on public corruption in Northwestern Indiana, and was instrumental in several ambitious cases. He worked out of the Hammond office, just across the State line from Chicago, the busiest of the four divisions of Northern Indiana. Mr. Van Bokkelen was eventually nominated by President George W. Bush and confirmed to serve on the U.S. District Court for the Northern District of Indiana.

After a stretch in private practice, Mr. Kirsch became a U.S. Attorney himself. He took up the mantle of Mr. Van Bokkelen's work to tackle public corruption and to prosecute public officials who betray their constituents' trust. Thomas Kirsch has prosecuted gangs, narcotics crimes, and a wide range of fraud and abuse cases, but it is his dedication to rooting out fraud and corruption I find most impressive. When reviewing his prosecution record, it's apparent that Mr. Kirsch has led a diverse and exemplary career that more than qualifies him for the seat he stands nominated for today.

In public service, he has proven his mettle in a wide range of cases, well respected among his colleagues for his legal mind and tireless work ethic, which is so important in anything. Throughout his career he has shown he has the judicial temperament that will serve him well in the public trust. In his most recent position especially he has demonstrated a profound respect for the law that I am confident will guide him to apply statutes as written, not create his own from the bench.

The breadth of his experience in law is impressive, but it is his focus again on public corruption and fraud among elected and appointed officials that I believe makes him such a compelling nominee. Thomas Kirsch is a nominee who is thoroughly dedicated to the proposition that no one is above the law, and he has the record to prove it.

Thank you.

Chairman GRAHAM. Well thank you both. You have an outstanding nominee from Indiana and you should be proud, and thank you very much for your very good introductions.

Now I will introduce Zach Somers and we'll get on with the hearing.

Zach is a nominee to the Court of Federal Claims in Washington, DC. He serves as Chief Counsel for Oversight Investigations here in the Senate Judiciary Committee. He has done an outstanding job from my point of view. I really appreciate his work ethic.

Prior to joining the Committee he served as General Counsel and Parliamentarian for the House Judiciary Committee. Before government service, Zach practiced law at a private firm in Washington, where he specialized in takings and government contract litigation in Federal court, including the Court of Claims. He started his legal career on the court to which he has been nominated as a clerk to Judge Victor Wolski, who was himself a Senate staffer before being nominated to the court.

He earned his undergraduate and law degree from Georgetown, and I just think he is an outstanding young man who will do a great job.

With that we'll go now to our circuit nominee. Mr. Kirsch, if you'd come forward please.

Would you raise your right hand, sir? Do you solemnly swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KIRSCH. I do.

[Witness is sworn in.]

Chairman GRAHAM. Okay. Welcome. Welcome to you and your family and loved ones out there. The floor is yours.

#### **STATEMENT OF THOMAS L. KIRSCH II, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT**

Mr. KIRSCH. Thank you, Senator Graham, and thank you, Senator Durbin, for conducting this hearing and considering my nomination. I would like to thank President Trump for nominating me for this seat on the Court of Appeals and also for appointing me to serve as the United States Attorney for Northern Indiana. I'm very grateful. I'm also very grateful for the support and the introductions by Senator Young and Senator Braun. Thank you both.

And also thank you to their terrific staffs who I know are very dedicated and have worked very hard on my behalf.

Although they could not be here today, I would like to introduce the Committee to my family. They very much wanted to be here, but are also understanding of why they are not.

My wife, Becky, and I have been married for 20 years. I absolutely would not be here today without her love and support. She's a terrific wife and a terrific mother. I have three sons and I'm so proud of each of them. Nick and Jack are twins and are sophomores in high school. Nick plays on the golf and tennis teams, and Jack plays on the golf and baseball teams. William is in the eighth grade and plays baseball, basketball, and tennis. They're all very good students and are outstanding sons, brothers, grandsons, and friends, and Becky and I are very proud of them, and I'm thinking of them today.

My father is a lawyer practicing in my hometown of Munster, Indiana. I strive to live up to the example he has set for me as a lawyer, but more importantly as a father and husband. He has shown me the importance of hard work and dedication to our profession and to public service. He served as a part-time prosecutor in Indiana for 20 years.

My mother has dedicated her life to raising me and my two sisters, Julie and Tracy, and as a parent myself I know that is a job that is never done. My sister Tracy is a middle school principal and my sister Julie is also a teacher, although she's not currently teaching. They are watching at home with my brothers-in-law, Chris and Jeff, and my nieces.

I would like to thank my Department of Justice colleagues, including those at the United States Attorney's Office in Northern Indiana; my former colleagues at Winston and Strawn, where I spent over 9 years of my career; Judge John Tinder, for whom I've clerked; and my friends with whom I've worked on either the same or opposite sides.

Thank you for allowing me the time to make this statement, and I look forward to answering your and the Committee's questions.

Chairman GRAHAM. Well thank you very much. Were you the U.S. Attorney? Did I get that right?

Mr. KIRSCH. Yes, sir. I am the U.S. Attorney right now in Northern Indiana.

Chairman GRAHAM. Okay. So in that capacity, what do you think is—you have learned the most that would make you an appellate judge, to help you in that endeavor?

Mr. KIRSCH. Senator, there's two things. First of all, I think my experience as being a United States Attorney and being in the courts, both in the district courts and the court of appeals, made me well qualified to serve as a circuit court judge. I also think the qualities that I've learned as the United States Attorney make me well suited for the circuit court, including temperament, including impartiality, including deliberate decisionmaking.

Of course, the United States Attorney, once we indict a case, I'm an advocate for the United States, but I have discretion in bringing prosecutions, and I keep an open mind in deciding which cases to bring. I think those qualities have made me well suited for the circuit court.

Chairman GRAHAM. Well, as a circuit judge, if that happens in your case, do you feel bound by precedent of the Supreme Court?

Mr. KIRSCH. Absolutely, Senator.

Chairman GRAHAM. Okay. And tell the Committee why you think that's an important concept.

Mr. KIRSCH. Senator, the rule of law is an extremely important concept, and, of course, I'm bound by all Supreme Court precedent, bound in every case, and I would apply the law faithfully and impartially in every case.

Chairman GRAHAM. When it comes times to interpret a statute or a regulatory provision, what kind of analysis do you use as a—on the circuit bench, if you get there? What would you be looking for?

Mr. KIRSCH. Senator, I would first consider the law. I would consider the ordinary meaning of the text at the time the text was written. I would apply that. I would then go to the canons of statutory interpretation if the law was ambiguous, including looking at other language in the statute, the words in context at the time they were written.

Chairman GRAHAM. Thank you. Senator Durbin.

Senator DURBIN. Thanks, Mr. Chairman. Mr. Kirsch, welcome. Thank you for coming before the Committee today.

Mr. KIRSCH. Thank you.

Senator DURBIN. Currently as U.S. Attorney for the Northern District of Indiana I'd like to ask you a question about your current job. Gun violence is an epidemic in this country. On average, more than 100 Americans are killed each day by gunfire, 40,000 per year. In the city of Chicago there have been more than 3,600 people shot just this calendar year.

According to the city's Gun Trace Report, in 2017, quote, "The majority of illegally used or possessed firearms recovered in Chicago are traced back to States with less regulation over firearms, such as Indiana and Mississippi." The 2017 report found that Indiana alone was the source of 21 percent of all of Chicago's recovered crime guns.

We know that there is a pipeline of gun trafficking from the northern reaches of Indiana to Chicago. The reason is that the State of Indiana has a gun show loophole, in effect. That means private sellers at gun shows in Indiana can sell weapons without first conducting an FBI background check of the buyer.

The problem of gun trafficking between the area that you represent as U.S. Attorney in Indiana and Chicago is pervasive. Last week, two men were indicted in the Northern District of Illinois for allegedly trafficking handguns from Indiana to Chicago. On October 6, an Indiana man was charged with allegedly selling dozens of guns in Chicago that had been purchased at Indiana gun shows. In August, an Indiana man was sentenced in the Southern District of Indiana for dealing unlicensed firearms after he sold over 320 guns at Indiana gun shows without conducting a single background check on any purchaser.

Mr. Kirsch, I'm sure you are well aware, these guns that are purchased at gun shows, in volume, end up on the streets of Chicago, killing and injuring many innocent people. On September 3, you issued a statement in which you said, quote, "My office is com-

mitted to focusing investigative and prosecutorial efforts on reducing gun violence in Northern Indiana. Our coordinated effort with the Northern District of Illinois proves that State borders do not save criminals from aggressive prosecution.” You went on to say, “We are working together to focus our resources on reducing violent crime and violence due to illegal firearms on both sides of the State line.”

My question is this: During your 4 years as U.S. Attorney in the Northern District of Illinois, pardon me, of Indiana, what did you actually do to prevent Indiana’s gun shows from being the source of a pipeline of gun trafficking into the city of Chicago?

Mr. KIRSCH. Senator, as United States Attorney I faithfully apply the law and I prosecute cases under 18 USC 922 and other cases involving other statutes applicable to gun crime. I prosecute approximately 200 gun cases a year, which is significant for the size of our office. I work closely with the Northern District of Illinois and my counterpart there, John Lausch, on initiatives and prosecution matters.

Of course, Senator, it would be inappropriate for me to comment on policy matters as a judicial nominee.

Senator DURBIN. No, no, no, no. I’m not asking you about policy. I’m asking you about your record. What have you done? Have you prosecuted any gun show abuses such as I’ve described?

Mr. KIRSCH. Senator, we prosecute, and I have prosecuted, multiple straw purchase cases, including cases where guns are recovered in Chicago. I’ve prosecuted RICO cases of homicides on the South Side of Chicago. We aggressively prosecute these cases. Although I’m a believer in the Second Amendment, we aggressively prosecute violent crime that occurs in Northern Indiana and also that which occurs in Northern Illinois.

Senator DURBIN. Would you be—I went through your record, and I tried to review it carefully but I may have missed it—would you be willing to provide us with some evidence of those prosecutions, just indications of the types of cases that you prosecuted against those who have abused this lack of background checks at gun shows?

Mr. KIRSCH. Senator, my office has issued numerous press releases where we’ve indicated—where we’ve prosecuted specifically straw purchase cases.

Senator DURBIN. Good. Could you send me a summary of that?

Mr. KIRSCH. Yes, Senator.

Senator DURBIN. Okay. Can I ask one more question? Did you watch the George Floyd video?

Mr. KIRSCH. Yes, Senator.

Senator DURBIN. And I asked your predecessor the same question a few weeks ago. What did you think about it?

Mr. KIRSCH. Senator, I think any time anybody is killed it’s extraordinarily tragic. I read the Chicago Tribune every day, Senator, and I think it’s tragic.

Senator DURBIN. I won’t hold that against you.

Mr. KIRSCH. Senator, it would be—in my role, I’m the United States Attorney, so in my role it would be inappropriate for me to prejudge facts or prejudice the investigation. Investigations are being carried out in Minnesota by the U.S. Attorney’s Office—

Senator DURBIN. No, no.

Mr. KIRSCH [continuing]. Law enforcement.

Senator DURBIN. Please. I'm not asking you to comment on that case or prosecution. I'm asking as an American, lawyer, prosecutor, defense attorney. When you saw that 8 minutes and 46 seconds, what did you think?

Mr. KIRSCH. Senator, any killing in the United States is tragic. It's tragic.

Senator DURBIN. Let's get into this a little more. This involved an African American man who was killed on the streets of Minneapolis. Did you draw anything from that fact?

Mr. KIRSCH. Senator, I can't—as a United States Attorney I can't comment on an ongoing investigation——

Senator DURBIN. All right, then——

Mr. KIRSCH [continuing]. That is being conducted right now.

Senator DURBIN. I'm going to get to this some way or another. Do you think we have an issue when it comes to race and law enforcement in America?

Mr. KIRSCH. Senator, I think racism exists in America and I think that's abhorrent.

Senator DURBIN. Have you ever—I know you have so I'm going to let you put it on the record. Have you ever prosecuted police abuse?

Mr. KIRSCH. Yes, Senator, I have, as a United States Attorney. Senator, I've indicted doctors, lawyers, I've indicted college professors. I've indicted accountants. I've indicted police officers, as the United States Attorney. I have.

Senator DURBIN. I read about the *Elkhart* case. Was there any other example, police abuse?

Mr. KIRSCH. Senator, I have indicted other police officers. Yes, I have. Some of those cases are still ongoing. It would be improper for me to comment on the litigation. But the answer is yes, I have indicted other police officers in addition to the Elkhart police officers.

Senator DURBIN. Thank you.

Chairman GRAHAM. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thank you, Mr. Kirsch, for being here and for being willing to be considered for this position.

In Federalist 78, Alexander Hamilton explains that the Judicial branch is the least dangerous of the three branches. This has become a somewhat unpopular view in this day and age. In fact, you have books that have been written with the title *The Most Dangerous Branch*, referring to the Judiciary. I understand the point they're making. There is a point, and that it has become more dangerous than many anticipated. But Hamilton said it should be the least dangerous branch because the Judicial branch possesses neither force nor will. It possesses only judgment.

Tell me what you think the differences are. Force, of course, is something the Executive branch has, the power of the sword. Will refers to what the Legislative branch, and judgment belongs to the Judiciary. What are the differences between those three powers, and why does that make the Judicial branch the least dangerous?



Mr. KIRSCH. Senator, the will is what policymakers do. It's imposing their policy preferences upon the people and passing laws. Judgment is what judges should do, which is apply the law, faithfully and impartially.

Senator LEE. What could change in the equation, established by the Constitution, that could make the Judicial branch the most dangerous? If you were to change any one feature or any one set of norms that was supposed to govern the distribution of power, what's the kind of thing that could make the Judiciary dangerous?

Mr. KIRSCH. Senator, I think if judges imposed their will they take the power of the Legislature, and it's not appropriate for judges to exercise their will. It's appropriate for judges to exercise their judgment, as Alexander Hamilton wrote.

Senator LEE. Whenever a judge acts, and acts in a case that is unpopular, or even that might seem counterintuitive or unkind, unjust, unfeeling, sometimes people will complain about the result in the outcome of that case. Tell me how you would deal with that as a judge, and whether you think that's the kind of thinking that ought to go into a judge's determination about the meaning of a particular law or provision of the Constitution, especially taking into account the fact that judges, with good reason, were made lifetime appointees, and therefore are beyond the reach of the voters. Tell me what you think about that.

Mr. KIRSCH. Senator, that has nothing to do with it. The judge should faithfully apply the law to the facts of the case, and in the event of a circuit court, to the facts developed in the district court, and the result is what it is. It's driven by the law. It's not driven by the policy preferences of the judge. And, Senator, as United States Attorney, I certainly make decisions that are not always popular, that are difficult decisions, and I apply the law. I'm driven by the law, as I would be—you know, as I would be as a judge. I would apply the law.

Senator LEE. Some push back on that and say that, you know, it's undemocratic to allow an unpopular decision to be made or a decision that perhaps most voters wouldn't like made under the law. And they'll point out that Federal judges, because they're not elected, perhaps should be that much more conscious of how the public might react to a particular decision. What's your response to that?

Mr. KIRSCH. Senator, the legislature can change the law, whether it's the U.S. Congress or the State legislatures. That's the role of the legislature. It's not the role of the judge. The role of the judge is to apply the law, to apply Supreme Court precedent, of course, and to apply the law as passed by the legislature.

Senator LEE. Which is worse, in your view, invalidating as unconstitutional a law that is not, in fact, unconstitutional, or letting stand an unconstitutional law even though it's unconstitutional? Is either one worse than the other, and if so, why?

Mr. KIRSCH. Senator, my answer would be that they're equally bad.

Senator LEE. What about dispositive motions? You'll be called upon, as per se, in the civil litigation side of your docket, if you're confirmed to the Seventh Circuit, to review a lot of dispositive mo-

tions, particularly motions granting a dismissal under 12(b)(6), or otherwise in granting summary judgment.

In your view, which is worse, denying a meritorious motion for summary judgment or a motion to dismiss?

Mr. KIRSCH. Well, Senator, I would try to avoid mistakes, either mistake, and they're both bad for the judicial system. Judges should get the right result. If a motion for summary judgment, for instance, is denied, the legal process continues in the district court, and there's another—the judge will have other opportunities to reach the right result down the road. Of course, if a judge grants a motion for summary judgment and makes a mistake, the parties have the right to appeal, but that's often a time-consuming and expensive proposition for lawyers and clients.

Senator LEE. I think that is part of the equation and part of why some will be a little bit more gun-shy before granting a dispositive motion. I think as with the previous question, I'm not sure either one is more defensible than the other, and the natural instinct of the judge can sometimes be, even if subconsciously this way, a recognition of the fact that if they deny the dispositive motion, in many instances that's not going to be immediately appealable. In many instances, if they deny the dispositive motion in addition to the lack of immediate appealability, increases the likelihood that the case will settle rather than go to trial.

And so in my view we don't want trial court judges being either too eager or too reluctant to grant or deny a dispositive motion. I think each of those mistakes we identified was equally bad. Would you agree with that?

Mr. KIRSCH. I would agree with that, Senator, and I think that would be the wrong way to approach a legal problem for a district judge, the district judge in search for the right answer. And if the correct result is to grant a 12(b)(6) motion, even if it's without prejudice, or to grant a summary judgment motion, the court should do that.

Senator LEE. Thank you very much. I look forward to meeting Becky, Nick, Jack, and William the next time you're in town, and when you can bring them.

Mr. KIRSCH. Thank you so much, Senator, and they look forward to meeting you.

Senator LEE. And I'm hoping they might be third-generation lawyers in your family. Thank you, Mr. Chairman.

Mr. KIRSCH. Thank you, sir.

Chairman GRAHAM. We can only hope. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. I'm going to be up on the screen, Mr. Kirsch, because I'm coming in remotely. Put your hand up if you can hear me.

Mr. KIRSCH. I can hear you, sir.

Senator WHITEHOUSE. Great. Okay. I actually wasn't going to ask you any questions, because you seem capable, qualified, calm, and without ulterior motive in going on to the circuit court. But in your answer to Senator Graham's questions you repeatedly emphasized the role of, even in a statutory review, what the intention was at the time written.

Now I'm willing to accept that judges should read the text of the statute and follow it as closely as can be, but I'm a little bit con-

cerned about restricting yourself to the intent of people, or what we believe or reconstruct their intent to have been, at the time that it was written. And the obvious example of this is *Brown v. Board of Education*. When the Equal Protection Clause in the 14th Amendment was adopted in 1868, I don't think anybody who was involved in that expected that it would require integrated schools, particularly not integrated schools in the South. And indeed, for nearly 100 years, it was not seen that way until the Supreme Court decided, in *Brown v. Board of Education*, that that had to go, that segregation in schools was an offense to the Constitution as well as to our moral and civic fabric.

So walk me through how you would get around the at-the-time written problem. I assume you would not have been a no vote in *Brown v. Board of Education*. You would have gone with the decision.

Mr. KIRSCH. Yes, Senator, I would—in a—

Senator WHITEHOUSE. So walk me through how you would get around the at-the-time written problem, because at the time written, the Equal Protection Clause clearly did not prevent segregated schools.

Mr. KIRSCH [continuing]. Senator, what I would do in a matter of statutory interpretation is I would take the text of the statute and apply the ordinary meaning of the text at the time—

Senator WHITEHOUSE. Yeah, that's where you start.

Mr. KIRSCH [continuing]. At the time the text was written. Senator—

Senator WHITEHOUSE. Okay. So there you go again, at the time the text was written. How does that apply to the Equal Protection Clause in *Brown v. Board of Education*?

Mr. KIRSCH. Well, Senator, the Supreme Court has obviously decided the *Brown* case, and the Supreme Court has addressed the Equal Protection Clause in numerous cases. But as a judge, as a judge, my responsibility would be to apply Supreme Court precedent, which I would do faithfully in every case. My job would not be to change the law. I believe that's the job of the legislature, and it would not be my job, as a judge. I would impose my judgment and not my will, whether I agreed or disagreed with the law, Senator.

Senator WHITEHOUSE. But wait a minute. Cases don't come to the Supreme Court until they've come up through the circuit courts. You're going to set—on the circuit court, the circuit court is going to hear cases of first impression, that then the Supreme Court will ultimately review. You don't need to be there if every case is already determined under Supreme Court precedent. The reason we have circuit court judges is to sort through the stuff that doesn't ineluctably follow from a Supreme Court precedent, and make a decision. And when you're making that decision, I'm concerned that if you go back, particularly in statutory interpretation but also in constitutional interpretation, to try to divine the intent of the people who wrote it, you would have ended up being a vote against, a dissenting vote, in *Brown v. Board of Education*. And you have got to tell me that's not so.

Mr. KIRSCH. Senator, I would not look at the intent of the people that wrote the language of the statute. I would look at the lan-

guage of the statute and consider the language of the statute and what the words meant at the time they were written, not the intent of the legislatures that passed the law.

Senator WHITEHOUSE. So what do you do? You go back to 1868 dictionaries and look for meaning?

Mr. KIRSCH. Well, you would apply the canons of statutory interpretation and you would look at the words in their context. You would look at the words in the statute. You would look at perhaps contemporaneous statutes. You would look at other provisions of the statute. And you would look at grammatical sources. You could look at a time period dictionary.

Senator WHITEHOUSE. And if you did all that, where would you come down on the Equal Protection Clause in *Brown v. Board of Education*, and why?

Mr. KIRSCH. Sir—Senator, *Brown* is unique in our history, and I would agree that *Brown* is correctly decided, although as you know, it's not the role of the judicial nominee to grade Supreme Court opinions. But I can confidently say that *Brown* was correctly decided.

Senator WHITEHOUSE. Even though it would be very hard to justify that decision under analysis that required it to be examined with a view to what was meant in 1868.

Mr. KIRSCH. Senator, I don't want to get into grading Supreme Court decisions—

Senator WHITEHOUSE. I'm not asking you to grade it.

Mr. KIRSCH [continuing]. On any particular holdings.

Senator WHITEHOUSE. I'm not asking you to do that. Did you hear the question? Do you want me to ask it again?

Mr. KIRSCH. Sure.

Senator WHITEHOUSE. So you have said that *Brown v. Board of Education* was correctly decided. You've said that you would make decisions about constitutional and statutory matters based on what the words meant at the time that they were enacted. In 1868 it was very hard to argue that those words in the 14th Amendment meant an end to segregated schools. So how do you reconcile your testimony that *Brown* was correctly decided with your view that the Equal Protection Clause should be read in light of what was meant in 1868?

Mr. KIRSCH. Senator, I would—if I were confirmed as a judge, I would apply the law. I would apply the text of the statute, as I said, and I would apply Supreme Court precedent.

Senator WHITEHOUSE. Okay. Well, we're clearly getting no place here, and I'm sorry this turned this way. I was actually inclined to—I was actually inclined to support you.

Chairman GRAHAM. Senator Whitehouse—

Senator WHITEHOUSE. No further questions, Mr. Chairman.

Chairman GRAHAM [continuing]. Don't go away. Can you stay around for a minute?

Senator WHITEHOUSE. Yeah, I'm here.

Chairman GRAHAM. Okay. I've been waiting all year for somebody to ask this question. Originalism—I get it. I understand it's a judicial constraint. You don't want to just start, you know, taking your feelings about what words mean, to have to be some construct of a judge. But Senator Whitehouse has asked a very good ques-

tion. In 1868, I don't think anybody envisioned the Equal Protection Clause to be used to legalize gay marriage, you know, but it eventually was.

Now let's get back to *Brown v. Board of Education*. Isn't it true that there was litigation at the lower courts that separate but equal was not equal? Are you familiar with that?

Mr. KIRSCH. Certainly, Senator. Certainly.

Chairman GRAHAM. Senator Whitehouse, are you still around?

Senator WHITEHOUSE. I'm here.

Chairman GRAHAM. Okay. So I'm familiar with this because South Carolina was being sued, and *Brown v. Board of Education* was the Kansas case, I think. Is that right, Ted? So they consolidated all these cases, and what the Supreme Court did is they looked at the record in terms of where separate but equal was the argument of segregated school districts, that under the Equal Protection Clause we are good to go. Even though they are separate school systems, they are equal.

And it's my understanding that the Court looked at the factual record and it was pretty overwhelming that separate did not mean equal, that in all of these States, all of the schools for African American children were underfunded, they were not clearly equal. And that led the Court to determine that separate but equal defense did not lie. Does that make sense to you, Mr. Kirsch?

Mr. KIRSCH. Yes, Senator.

Chairman GRAHAM. Well—and this goes back to Senator Whitehouse's question—there was a factual determination about a case in controversy where people sued, at the lower court level, alleging that a violation of the Equal Protection Clause existed because the argument separate but equal was false. And it was the information received in 1954 that led the court to reject the concept of separate is, in fact, equal. Does that make sense to you?

Mr. KIRSCH. Yes, Senator.

Chairman GRAHAM. Okay. How do you square that with originalism?

Mr. KIRSCH. Senator, it's the role of the lower courts to determine the facts in a case.

Chairman GRAHAM. So my point is, you just don't look at the statute or the constitutional provisions. You look at the record before you. Is that correct?

Mr. KIRSCH. You have to, Senator. You must take the facts—

Chairman GRAHAM. Senator Whitehouse, does that make sense, that the record is part of the decisionmaking process, just not the words of the statute?

Senator WHITEHOUSE. Mr. Chairman, you are an outstanding lawyer and I think you have done a terrific job of rehabilitating the witness.

Chairman GRAHAM. Well, I just think this is a hard question for anybody to answer, quite frankly, because if you are in the originalism camp, which clearly you seem to be, which is fine to me, I've always wondered, Senator Whitehouse, originalism doesn't mean ignoring the record in front of you. We talk about words and their meaning and who wrote them and what they intended at a time, certain, but litigation also develops a record, and it's okay to

look at the record, even for an originalist? Is that correct, Mr. Kirsch?

Mr. KIRSCH. Absolutely, Senator. It's not the role of an appellate court judge, of course, to create facts or find facts.

Chairman GRAHAM. So I would argue that that same concept went on, when it came to same-sex marriage, I would think.

Senator WHITEHOUSE. I don't think that's the case with *Obergefell*. We would have to take a look at that.

Chairman GRAHAM. It may not be, but I'm pretty sure about—now I'm going to turn it over to the people far smarter than me about originalism, and how a judge would—what you would look at in rendering a decision. But I hope looking at the record is one of the things that we would all agree is appropriate to do.

Senator DURBIN. Mr. Chairman, before the Senator from Texas asks, I'd like to explore this same line of questioning, perhaps not with this witness but in another venue, on *Griswold*.

Chairman GRAHAM. Yeah. I mean, I find—you know, I don't have anything to do this afternoon so this seems to be a good use of my time. I've always been interested in this exchange. Thank you, Senator Whitehouse, for making it possible.

Now we'll turn it over to somebody who knows far more about this than I do, Senator Cruz.

Senator CRUZ. Well, thank you, Mr. Chairman, and I'm actually somewhat astonished to see, in the U.S. Senate, something resembling actual debate breaking out—

Chairman GRAHAM. It won't last.

Senator CRUZ [continuing]. And discussions of great principles of constitutional law. You know, I will note, on this topic, that when originalism comes up, critics of originalism often misunderstand it or mischaracterize it, and use in the phrase "original intent," which is not, in fact, what originalism is all about, that the subjective intent of the framers of the Constitution, the subjective intent of the Congress, that proposed the 14th Amendment, is not ultimately what is controlling. Rather it is the text of the Constitution. And the original public meaning, what the American people would have understood, the text of the 14th Amendment, one of the most foundational and transformational amendments passed in the wake of the Civil War, provided that no State shall deny any person the equal protections of the laws. And right in there was a requirement for equal protection.

The Supreme Court, in 1896, in *Plessy v. Ferguson*, unfortunately disregarded the plain command of the Equal Protection Clause, and created instead the doctrine of separate but equal to justify segregated schools, to say that even though State government laws that said African American children cannot attend school alongside white children, even though they were plainly being denied equal protection of those laws, the Supreme Court was going to justify that by declaring it to be separate but equal.

*Plessy* was an act of judicial activism. *Brown* overruled *Plessy*. And I would note that Justice John Marshall Harlan, who was the lone dissenter in *Plessy*, and who is often referred to as "The Great Dissenter," Justice Harlan's dissent wrote correctly that, quote, "The Constitution is colorblind and neither knows nor tolerates classes among citizens." That was the view that I believe was faith-

ful to the text of the Equal Protection Clause, and it was the activism of *Plessy* that was rightly and unanimously overturned in *Brown*.

Chairman GRAHAM. If we can keep this going a bit, and you'll have all your time, just for curiosity's sake, the record that was formed in the lower court litigation that, in effect, separate was not equal, was that appropriate for the court to consider the facts on the ground, that the defense by each State was, no, we comply because separate is equal, and the court found, from litigation, that it was not. So that's not inconsistent with originalism, right?

Senator CRUZ. Well, sure, and in litigating *Brown* they built a factual record to demonstrate that it was not remotely equal. Thurgood Marshall was integral in that litigation effort, and it's one of the reasons why he's remembered by history as one of the greatest Supreme Court advocates who have ever lived, for building that factual predicate and achieving that.

Chairman GRAHAM. And it was okay to look at the record as part of the inquiry.

Senator CRUZ. In every case, the record and the actual facts are central to resolution.

Chairman GRAHAM. Thank you, Senator Cruz. Now you can ask questions at him.

Senator CRUZ. So welcome to the discussion club.

Mr. KIRSCH. Thank you, Senator.

Senator CRUZ. Let me ask you just a general question. If you are confirmed and find yourself serving as a judge on the court of appeals, how would you describe your jurisprudential approach?

Mr. KIRSCH. I couldn't understand the last two words that you said, sir.

Senator CRUZ. How would you describe your jurisprudential approach?

Mr. KIRSCH. Senator, I would apply the law. I would apply Supreme Court precedent to the extent that it's controlling, it's totally binding on the circuit courts, I would apply the law. I would then, to the extent it was a matter of statutory or constitutional interpretation, I would, as I said, apply the ordinary meaning, the ordinary public meaning, of the text at the time the text was written. I would not impose my will, as a judge. I would not make law.

Senator CRUZ. And how would you define judicial activism?

Mr. KIRSCH. I would define judicial activism as judges that impose their policy preferences in their decisions, or driven by an outcome in a decision based upon a particular policy preference, imposing their will on the outcome or on the matter that they're considering.

Senator CRUZ. Tell this Committee your views on the importance of the Constitution's protections of our rights to free speech.

Mr. KIRSCH. Senator, I am a strong supporter of the Bill of Rights, including the First Amendment, and my experience and my career demonstrate that. As both a prosecutor and as a defense attorney I'm committed to supporting the Second Amendment. I also support the Fifth Amendment. I support the Sixth Amendment. I support and enforce the Fourth Amendment. I support the Tenth Amendment. They're all important, Senator.

The First Amendment—freedom of speech, freedom of religion—are really the bedrock foundations upon which our country was founded.

Senator CRUZ. And why does free speech matter to the American people? Why should someone at home, watching this hearing, care about judges who will protect our rights to free speech?

Mr. KIRSCH. Senator, the worst forms of government, when we look back in our history, the right to free speech was denied. The right to free speech is fundamental to the foundation of our country, to the liberty protected by the Constitution. It's central to our form of government.

Senator CRUZ. So same question but this time concerning religious liberty. Why does it matter to the American people that we have judges who will protect our rights of religious liberty?

Mr. KIRSCH. Senator, it's extraordinarily important that judges protect all of our rights contained in the Bill of Rights, including the First Amendment religious liberty clause, for the same reasons I mentioned with the free speech clause. It's a bedrock. It's a founding principle of our Constitution.

Senator CRUZ. Thank you very much, and Mr. Chairman—Mr. Chairman is gone, but I will note for the record a rather astonishing thing, which is we had a debate about originalism and somehow Senator Lee did not interject. And I've always believed in miracles, but we've now witnessed one in this hearing room.

Senator LEE [presiding]. And yet my time having expired at the moment, and the Chairman still being in the room, I couldn't interject. It was difficult. But I enjoyed it, nonetheless. It was fantastic.

Next at bat we have Senator Hirono.

Senator HIRONO. Thank you. I would like to note, for the record, that we are experiencing record numbers of people testing positive, including most recently Senator Grassley, our colleague, testing positive for COVID, and more people dying. And yet here we are trying to put more judges for lifetime appointments to our various courts. So rather than dealing with a COVID situation that has impacted so many families and workers and businesses, we are spending time doing this, which is, by the way, it is unprecedented that we should have a hearing like this, in the remaining days of a lame duck President.

So in this case I am particularly concerned that this Committee is holding a hearing for the Seventh Circuit nominee who is further entrenching the lack of diversity that is characteristic of President Trump's judicial nominees. The NAACP has observed that the Seventh Circuit is the only all-white court of appeals in the country, even though 30 percent of its residents are people of color. And moreover, this seat is only available because Senate Republicans blocked President Obama's nominee, Myra Selby, who would have been the first African American to serve on the Seventh Circuit from Indiana.

I find the discussion on originalism pretty interesting, because when we refer to Supreme Court decisions, such as *Plessy* and *Brown v. Board of Education*, it is very clear that judges do not come to their positions like blank slates, tabula rasa. Justice Rehnquist made that observation. Clearly those courts and the Supreme Court have changed its mind and if Mr.—sorry, if our nomi-



nee views himself more as an originalist then we can look forward, I suppose, to this current Supreme Court revisiting *Obergefell*, which Justice Scalia said there was no basis in the Constitution for same-sex marriage, echoed by Justices Alito and Thomas, who have signaled that they would like to revisit *Obergefell*.

I ask all nominees for any of the Committees on which I sit the following two questions, and I'm going to ask you this question. Since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

Mr. KIRSCH. No, Senator.

Senator HIRONO. Have you ever faced discipline or entered into a settlement related to this type of conduct?

Mr. KIRSCH. No, Senator.

Senator HIRONO. Let me turn to an introduction you gave to then Attorney General Sessions in June 2018, when you gave a speech on immigration in Fort Wayne, Indiana. During the speech, the Attorney General defended the Trump administration's zero-tolerance policy, which resulted in thousands of migrant children being forcibly separated from their parents.

Did your office prosecute any migrants under DOJ's zero-tolerance policy?

Mr. KIRSCH. Senator, we—my office indicts hundreds of cases a year, but off the top of my head I don't recall any.

Senator HIRONO. Well, maybe you could check and think back to if your office did prosecute any migrants under the zero-tolerance policy. And then also if you could tell me if such prosecutions occurred, how many children were separated from their parents because of those prosecutions.

The next question. Did your office keep track of the parents and the children so they could be later reunited, because of the separation under the zero-tolerance policy? Was your office involved at all in keeping track of the parents of these children who were separated?

Mr. KIRSCH. Senator, as I sit here today as the United States Attorney, I'm not aware of any such cases in Northern Indiana.

Senator HIRONO. Okay. You are aware, of course, that the zero-tolerance policy resulted in children being separated, and, in fact, some 545 of these children still, their parents cannot be found at all. It is a major tragedy.

During the 2020 elections, as U.S. Attorney you were appointed on a journey to serve as the election officer to handle election fraud complaints in the Northern District of Indiana. Do you have any evidence of widespread voter fraud or votes being stolen—

Mr. KIRSCH. Senator—

Senator HIRONO [continuing]. In Indiana?

Mr. KIRSCH [continuing]. Senator, as the United States Attorney, as have previous United States Attorneys, we always appoint an official to oversee those matters, and as an Assistant U.S. Attorney, Senator, I did prosecute and was involved in voter fraud investigations. As far as current or active investigations that are going on in the Northern District of Indiana it would be improper for me to comment on any of those, one way or the other, Senator, as the United States Attorney.

Senator HIRONO. Well, as far as you know, has your—has the election officer uncovered any instances of voter fraud or votes being stolen in the Northern District of Indiana?

Mr. KIRSCH. Senator, as the sitting United States Attorney I could not comment on that. It would be improper for me to comment on that, one way or the other.

Senator HIRONO. Excuse me. I'm not asking you to comment on whether or not—just the numbers, because you appointed someone to make that—to keep records of whether voter fraud actually—complaints were filed. And I'm just asking you what the numbers were.

Mr. KIRSCH. Senator, there are processes by which we take complaints from citizens and by which we handle sensitive law enforcement matters that are—where we work with our Federal, State, and local law enforcement to conduct investigations. And it would be improper for me to comment on matters that may or may not be ongoing in the office, with respect to potential voter fraud or any other area.

Senator HIRONO. Mr. Chairman, is my time up? I can't see the clock.

Senator LEE. Yes, it is, but you can finish this question if you would like.

Senator HIRONO. Thank you. I am not asking for any determination as to whether or not these claims are valid. I'm simply asking whether claims of voter fraud have been filed. That's all I am asking, and I am not getting an answer to that question.

Okay. Well, I will submit further questions for the record. Thank you.

Senator LEE. Thank you, Senator Hirono. Senator Kennedy, you're next.

Senator Hawley is next. Good timing. Senator Hawley being from Missouri, the Show Me State, I've never really understood what that means. But I assume that must mean that they're experts in showmanship, which Senator Hawley certainly is, given the timing that you just saw on live display here. And plus just look at him. He is a born showman. Hopefully I have filibustered enough now to give Senator Hawley a chance. Are you ready to go?

Senator HAWLEY. I'm ready.

Senator LEE. Thank you.

Senator HAWLEY. Okay. Thank you very much, Senator Lee, for those kind kind words.

Let's see here. Mr. Kirsch, I can't see you at the moment. Oh, you are here. Fantastic. I was looking—I was so conditioned to looking at the televisions. It's nice to see someone here in person. Congratulations on your nomination.

Mr. KIRSCH. Thank you very much.

Senator HAWLEY. Yeah, thank you for being here. And congratulations. I understand that we have talked already a good bit about your role in the U.S. Attorney's Office, but thank you for your service in that aspect.

Let me just ask you a question about statutory interpretation. This is something that will undoubtedly come up frequently, and this will be your—this is about to be your day job, should you be confirmed. Talk to me a little bit about how you would approach

statutory interpretation in a case of first impression, where you're not controlled by precedent. What are the tools that you would use, and in what order would you use them? Just walk me through that, if you would.

Mr. KIRSCH. Sure. I'm happy to, Senator. Senator, I would take the text of the statute. If it was a statute that I was interpreting, I would take the text of the statute. I would read the words. I would apply the ordinary meaning of the words at the time that they were written. That's what I would do first. To the extent—

Senator HAWLEY. And in the case of statutory ambiguity, if you have a text where there is some ambiguity, what do you do next? So you start with the text, you find some ambiguity, you do not have controlling precedent, then what?

Mr. KIRSCH. Well, Senator, I continue—I would consider the words in context. So I would consider the words that precede and that come after the clause at issue. I would look at the statute in a whole. I would look at the—I would look at contemporaneously past statutes. I would look at grammatical text. I could look at a time period dictionary. Those are the things that I would do. I would consider the text, the text of the law.

Senator HAWLEY. What about the canons of statutory interpretation? Talk to me about those. Would you use those? What's your understanding of how those might factor in a textual analysis, in an interpretive analysis?

Mr. KIRSCH. Yes, Senator. I would apply the canons in the manner in which I described, what I would consider the words of the statute. I would consider—you know, I would consider the words of the clause. I would consider the words of the clause, I would consider the statute.

Senator HAWLEY. What about legislative history?

Mr. KIRSCH. Senator, I would—in the matter of a scrivener's error or something like that, I could look at legislative history. But as a general matter I would not look to legislative history. It doesn't represent what the law was passed. It doesn't represent the collective intent of the legislative body. And also, Senator, people have a right to know what the law is, and I would not look behind the curtain, so to say to tell Americans this is what the law is. I would look at the text and confine myself to the text of the statute.

Senator HAWLEY. You've mentioned context now, historical context, several times, dictionaries of the period, you said, looking at the words in their historical context. Tell me about when it comes to public meaning, public meaning at the time the text was adopted, the statute in question was adopted. What about this idea of a latent, if you like, public meaning? So a public meaning that maybe is there but no one at the time thought that the words meant this. No one at the time would have thought that the statute actually was interpreted that way. But judges, let's say, 50 years later or 60 years later say, "Well, actually, no, a fair reading of the text, we could reach that result," even though no one anticipated that at the time. What do you make if an argument like that?

Mr. KIRSCH. Senator, I would apply the ordinary public meaning of the words at the time that they were written. I do not believe that it's the job of a judge to change the law. It is uniquely within

the provenance of the legislature to change the law. It's not a judge's role to do that.

Senator HAWLEY. And do you understand the ordinary public meaning, therefore, to be grounded in some evidence of what the drafters, ratifiers, and general public at the time understood the words to mean? In other words, what I'm trying to get a read on here is, there is a growing school of thought, embraced, I have to say, by some judges who consider themselves conservative, that say that, well, public meaning can mean a lot of different things. Public meaning can mean something that is fairly present in the text. You could read the text in this way, even though nobody at the time actually thought it meant that. But, you know, we could find that actually if you just take the meaning, the plain meaning of the words, it could mean this thing, that nobody thought of 50 years ago.

Is that a theory that you would subscribe to? Again, in my words, I have called that latent public meaning. So supposedly it's there, but it is just that nobody but a judge, until 50 years later, discovered it. I mean, how would you tackle that?

Mr. KIRSCH. Senator, I think what you are describing as latent public meaning is a little different than what I've described as the ordinary public meaning, and I would subscribe—in my philosophy, I would subscribe to the ordinary public meaning of what the words meant at the time they were written, similar to what I said regarding legislative history and the use of legislative history.

Senator HAWLEY. Very good. Well, I am heartened to hear you say that. I think that that is exactly the right and common-sense approach. And I have to say this trend from conservative judges and justices of discovering so-called public meanings in statutes that no one at the time, nobody—not the drafters, not the general public—nobody thought that the statute could mean interpretation. And yet the judge suddenly discovers it later. I think it is very injurious to the rule of law and to basic expectations about the law, and I'm glad to hear you say that.

Thank you very much. Congratulations again, and thank you, Mr. Chairman.

Senator LEE. Thank you, Senator Hawley. Senator Blumenthal, he's up next.

Senator BLUMENTHAL. Thanks, Mr. Chairman, and I am participating remotely. Mr. Kirsch, thanks for joining us today. I want to begin by expanding a little bit on the questions that you received from Senator Hirono.

First, let me say I join her in my concern about the composition of the Seventh Circuit bench. I think it fails to look like America. It fails to represent the diversity of America, and I think that your nomination, in no way expands that diversity, obviously, and I think that's a grave shortcoming, not attributable to you personally, but to the President and to this administration.

Talking for the moment about the administration, as you know the Attorney General issued a memo to you and other U.S. Attorneys on November 9, saying that you should be looking at post-voting election irregularity. And promptly, the same day, in fact, the Director of the ECB, the Elections Crimes Branch of the Public Integrity Section, Richard Pilger resigned from his position, specifi-

cally noting that the November 9 memo abrogated past ECG practice.

Days later, 16 Federal prosecutors assigned to monitor the election wrote to the Attorney General that they found no evidence of, quote, “substantial allegations of voting and vote tabulation irregularities,” end quote, and asked him to withdraw that memo. Did you join that letter?

Mr. KIRSCH. Senator, I’m honored to serve as the United States Attorney, to serve the administration in this role in the Northern District of Indiana. I received the memo from the United States Attorney General, as did all the other United States Attorneys in the country.

Senator BLUMENTHAL. I’m asking you whether you joined the letter, written by Attorneys General, United States Attorneys, saying they found no evidence of substantial allegations of voting and vote tabulation irregularities? That is a yes or no. You did not, right?

Mr. KIRSCH. Senator, I’m not sure what letter you are referring to, sir.

Senator BLUMENTHAL. Well, we’ll provide you with the letter at some point. But let me ask you, if they were able to say, as they did in their letter, that they found no irregularities, can you tell the Committee whether you found any irregularities?

Mr. KIRSCH. Senator, as the United States Attorney we investigate numerous things, and it’s not proper for me to comment on ongoing investigations as to what we may be looking at or what we may not be looking at.

Senator BLUMENTHAL. Are you saying, Mr. Kirsch—I apologize for interrupting but my time is short. Are you saying that they improperly told the Attorney General of the United States that they found no irregularities? Was that improper of them to do?

Mr. KIRSCH. Senator, with all due respect, I don’t know who “they” is. I don’t know the “they” that you are referring to, sir.

Senator BLUMENTHAL. Well, there were 16 of your colleagues, United States Attorneys, who wrote that letter, and we’ll provide it to you.

Let me move on. In *Kanter v. Barr*, as you know, Amy Coney Barrett wrote a dissent in which she contended that the Second Amendment prevented Congress from reaching a legislative judgment that felons, as a group, were too dangerous to possess firearms. I know you’ve written and stated the importance of gun violence prevention. Would you have joined her dissent?

Mr. KIRSCH. Senator, it would not be appropriate for me to say, as a judicial nominee, how I would rule on a particular case or how I would decide a particular case. That would be improper, sir.

Senator BLUMENTHAL. Right. I’m asking you not about a future case. I’m asking whether you would have joined her dissent in *Kanter v. Barr*, which, in effect, might well have led to courts like yours, the Seventh Circuit, the seat that you’re going to fill, striking down a very responsible measure that says, in effect, felons cannot possess firearms.

Mr. KIRSCH. Sir, it would be inappropriate for me to grade Seventh Circuit precedent and to indicate, in a case like that, whether I would agree with the majority opinion or whether I would agree with the dissent.

Senator BLUMENTHAL. Well, I must say I don't understand that position.

Let me ask you this. You told Senator Whitehouse that you believe *Brown v. Board of Education* was correctly decided. Correct?

Mr. KIRSCH. Correct. Correct, Senator, and—correct. I told him that—

Senator BLUMENTHAL. Let me ask you about another case, *Roe v. Wade*. Was it correctly decided?

Mr. KIRSCH. Senator, what I told Senator Whitehouse was that as a general matter judicial nominees should not grade or give a thumbs up or thumbs down to precedent of the Supreme Court, as now Justice Kagan has said. *Brown* is unique in our history, and I'm comfortable saying that case was correctly decided. I'm also confident to tell you, and very confident, Senator, I would apply all Supreme Court precedent as a lower court judge, including *Roe* and its progeny.

Senator BLUMENTHAL. I'm asking you for your view as to whether it was correctly decided. Is there no other case that you can say was correctly decided by the U.S. Supreme Court, besides *Brown*? You say it is unique.

Mr. KIRSCH. *Brown* is unique. I would cite *Loving*, which follows from *Brown*. I would cite *Marbury v. Madison*. But, sir, as a lower court judge—

Senator BLUMENTHAL. *Obergefell*?

Mr. KIRSCH. Sir, as a lower court judge and as a judicial nominee it's inappropriate for me to grade decisions such as *Obergefell* or *Roe*. But I can tell you that I would faithfully apply them, as I would be required to do with all Supreme Court precedent.

Senator BLUMENTHAL. I think my time has expired. Thanks for answering my questions, Mr. Kirsch.

Senator LEE. Thanks, Senator Blumenthal. And unless Senator Kennedy is joining us electronically, Senator Blackburn.

Senator KENNEDY. I'm here.

Senator LEE. Oh, you are there. Go ahead. Senator Kennedy, you're up.

Senator KENNEDY. Thank you, Mr. Chairman. Counselor, I'm not going to try to trick you. I don't want to know how you're going to vote in specific cases, and I'm not going to ask you about your opinion on Supreme Court precedent. I just want to know how you think.

Let's go back to this concept of original public meaning. The Constitution should be construed according to its original public meaning at the time. Am I correct in that proposition?

Mr. KIRSCH. Yes, Senator. I think that's an accurate summary of what I said.

Senator KENNEDY. Okay. Do you think that the average American, at the time the Constitution was adopted, after reading the Constitution, would say the Constitution requires integrated public schools?

Mr. KIRSCH. Senator, at the—well, I'd have to look into that issue. I mean, I think the answer may be—I'd have to look into that a little bit more. I mean, as I sit here and I think about that, I don't know that the answer would be yes. I certainly don't—I

don't know what was going on. Well, I don't think the answer would be yes, sir.

Senator KENNEDY. Okay. Then how did we get *Brown v. Board of Education*?

Mr. KIRSCH. Well, sir, we——

Senator KENNEDY. Which, by the way, we both agree was properly decided and we support. But how do you go from most people wouldn't read the Constitution at the time as requiring integrated public schools to *Brown v. Board of Education*?

Mr. KIRSCH. Well, sir, the Fourteenth Amendment guarantees equal protection, and——

Senator KENNEDY. Right.

Mr. KIRSCH [continuing]. As Senator Graham indicated, as with all litigation, there was a detailed, factual record that was developed in the lower courts that demonstrated that the schools were separate but they weren't equal, and therefore, that it doesn't——

Senator KENNEDY. Excuse me. Sorry for interrupting, Counselor, but my time is limited. I understand all that. But what I'm trying to understand is if the average person at the time the Constitution was adopted read it, and when they came across the words "equal protection," if integrated public schools didn't come to mind and it's not part of the original public meaning, then how did we get *Brown v. Board of Education*?

Mr. KIRSCH. Senator, it's the principles of—it's the principles of the Equal Protection Clause. I mean, it's the same with——

Senator KENNEDY. Do you think the principles should be interpreted according to the original public meaning?

Mr. KIRSCH. Senator, I think the principles that applied at the time the Constitution was written are the same principles that court should impose now. I think that we see this in other areas of the law, including the Fourth Amendment context.

Senator KENNEDY. Well, and I'm agreeing with you, Counselor, and I'm not trying to trick you, and I'm certainly not suggesting I don't agree with *Brown v. Board of Education*. I'm just trying to get a feeling for your analytical skills. And I'm not saying you're not skillful. But if you were living at the time the Constitution was drafted—once again, we're going to concentrate on original public meaning—and you read the Constitution, I think that any fair-minded person would conclude that the drafters of the Constitution wanted what's best for children and prosperity. Okay? Two principles.

But that doesn't tell us anything, if we're going to adhere to the original public meaning. Do you understand where I'm coming from? Equal protection is fine as a concept, but does or does not the original public meaning mean what it says?

Mr. KIRSCH. Senator, yes, but the principles of equal protection, you must take the principles and apply them to the facts.

Senator KENNEDY. So you're telling me that the principles change over time?

Mr. KIRSCH. No, sir. I'm telling you the factual record that was developed in *Brown* demonstrated that separate schools were not equal and were not, therefore, consistent or compliant with the Fourteenth Amendment Equal Protection Clause.

Senator KENNEDY. But at the time of the adoption of the Constitution there were not integrated public schools, were there? So we already had the facts.

Mr. KIRSCH. Senator, I don't know. I don't know that there were integrated public schools or not. I don't know what was happening in some of the States or in some of the various States across the country. Certainly there weren't everywhere. I don't know, though, that there wasn't anywhere. I just don't know.

Senator KENNEDY. Okay. Well, my time is up. I want to make it clear that I agree with *Brown v. Board of Education*, and I understand that you agree with it as well. I'm not suggesting it's not rightly decided. I just was trying to get your thoughts on what original public meaning means in the real world.

Counselor, thank you for your time today.

Mr. KIRSCH. Thank you, Senator.

Chairman GRAHAM [presiding]. Thank you. Do we have anyone else?

Thank you very much. Welcome to the Judiciary Committee. But in all honesty, you know, originalism, I understand it to be, you know, a very valid concept in terms of judicial decisionmaking, and it does offer comfort and restraint to conservatives, but it's not inconsistent, in my view, looking at facts that are in a case. And I've been waiting for somebody to ask Senator Whitehouse this question for a while. It's probably true that there were more segregated schools in 1868 than there were integrated schools. For sure there was no State that allowed same-sex marriage. So how, over time, does this change?

Well, the argument that separate schools were, in fact, equal under the Constitution failed because of a factual analysis, and the term is supposed to be "colorblind" is the dissenter in *Plessy v. Ferguson* said. So I think Senator Cruz's argument that *Plessy* was judicial activism is probably true.

But my point, and the reason I weighed in, is that every case and controversy has a record, and whether you are an originalist or whatever you want to be, you need to also look at the record. Do you agree with that?

Mr. KIRSCH. Yes, Senator, I do. The record is——

Chairman GRAHAM. Thank you. You did a great job, and our next panel will come forward please. Thank you.

[Pause.]

Chairman GRAHAM. Hello. Welcome to the Committee. Could you all raise your right hand please.

Do you solemnly swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

[Chorus of ayes.]

[Witnesses are sworn in.]

Chairman GRAHAM. Okay. Congratulations to each of you and to your families. I know this is a big day in your lives. Welcome to the Committee. And Zach, we'll start with you and go from my right to the left. The floor is yours.



**STATEMENT OF ZACHARY N. SOMERS, NOMINEE TO SERVE AS  
UNITED STATES JUDGE OF COURT OF FEDERAL CLAIMS**

Mr. SOMERS. Thank you, Chairman Graham. Chairman Graham, Senator Durbin, thank you for holding today's hearing. I must say, as someone who has spent over a decade sitting behind the dais, in both this Committee and the House Judiciary Committee, today's hearing is a bit of a change of perspective for me. I'm honored and humbled to have been nominated to the Court of Federal Claims by President Trump, and I want to begin by thanking him for nominating me.

If confirmed, I guess I will be going full circle in my legal career, that began about 16 years ago as a law clerk on the claims court. I can't believe it has been 16 years since I clerked on the court. It seems like it was not that long ago. But I've done a lot in the years since, from litigating cases before the court to working on countless hearings, markups, and investigations in both the House and the Senate, to having bills I worked on signed into law, to being nominated and sitting before you today.

All of that would not have been possible without the help and support of my family, friends, and colleagues, who I would like to take a moment to acknowledge. First, my parents, Susan and Jay Somers, who have stood by me, sacrificed greatly so that I could receive a top-notch education, and encouraged me to do my absolute best throughout my life and career. And my grandparents, who although they have passed, I know would be proud of me today. I'm sure my grandfather is looking down from above saying, "You done good."

My godparents, Bob and Dee Dee Branand, who have always believed in me, pushed me to achieve my dreams, and to never give up. My sister, Kai, and my best friends, Brandt, Brian, and Brittany, who were always by my side, with encouragement and support, and, of course, humor and humility.

I also want to acknowledge those who have mentored me and given me great opportunities throughout my professional career. Judge Wolski, who's been a mentor and friend, and encouraged me in my pursuit of this judgeship. Roger and Nancy Marzulla, who gave a young lawyer an opportunity to get in-depth and hands-on legal experience in the claims court. Former House Judiciary Committee Chairman Lamar Smith, Bob Goodlatte, and, of course, my current boss, Lindsey Graham, who were all instrumental in providing me opportunities to further my legal career on Capitol Hill.

Finally, I would like to acknowledge the many staff directors I have served under, but especially Richard Hertling, Shelley Husband, and Lee Holmes, and the many colleagues I've worked beside throughout my years on Capitol Hill, especially Paul Taylor, Daniel Flores, Andrea Loving, Allison Halatei, Ted Lehman, Kyle McCollum, Katherine Nikas, and last but certainly not least, my partner in countless staff depositions, Art Baker, and the rest of my investigative team, Chris, Gabi, and Elliott.

Thank you for considering my nomination and I look forward to any questions you may have.

Chairman GRAHAM. Mr. Dawson.

**STATEMENT OF JOSEPH DAWSON III, NOMINEE TO SERVE AS  
UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF  
SOUTH CAROLINA**

Mr. DAWSON. Thank you, Senator, Chairman Graham. First I want to express my sincere thanks to President Trump for nominating me.

Chairman GRAHAM. Pull the mic a little bit closer, if you don't mind. There we go. Make sure it is on.

Mr. DAWSON. Thank you. Can you hear me better?

Chairman GRAHAM. That is better. Yeah.

Mr. DAWSON. Thank you. First I want to express my sincere thanks to President Trump for nominating me to serve as a district judge for the District of South Carolina. I am humbled by the trust and confidence the President has placed in me. It is truly an honor to serve in the Federal judiciary.

I want to thank Chairman Graham for holding this hearing today. I also want to thank Senator Scott for his kind words and introduction before this Committee. I want to thank my home Senators, Chairman Graham and Senator Scott, for their support of my nomination. I do not take your support lightly.

I would like to thank my beautiful wife of almost 29 years for her steadfast love and friendship. She has faithfully stood by my side as I attended law school, served in the South Carolina Army National Guard, and as the county attorney. She has offered unwavering loyalty, a listening ear, and many prayers and words of encouragement.

I want to acknowledge our three wonderful children: Joseph IV, who is a graduate of Oral Roberts University and a manager at FedEx; Hannah, a high school junior; and Rebecca, a high school sophomore. The fact that my teenage daughters still enjoy my company gives me hope that I am still relevant in their lives.

I want to thank also the past and present members of Charleston County Council for giving me the privilege of serving the citizens of Charleston County as the county attorney for almost 20 years. I would also like to thank my staff in the Charleston County Attorney's Office for their professionalism, integrity, and dedication.

Thank you, Chairman Graham, and other Members of the Committee for considering my nomination.

Chairman GRAHAM. Thank you. How do you say your last name, ma'am?

Ms. CRYTZER. Crytzer, sir.

Chairman GRAHAM. Okay. The floor is yours.

**STATEMENT OF KATHERINE A. CRYTZER, NOMINEE TO SERVE  
AS UNITED STATES DISTRICT JUDGE FOR THE EASTERN  
DISTRICT OF TENNESSEE**

Ms. CRYTZER. Chairman Graham, Ranking Member Durbin, and distinguished Members of this Committee, thank you for the opportunity to appear before you today. I would also like to thank the President for nominating me. I am honored and humbled. I am grateful to my home State Senators, Senator Alexander and Senator Blackburn, for their support of my nomination.

I thank my family, friends, and colleagues for their support. First and foremost, I thank my husband, Joe Oliveri. Joe is a brilliant

lawyer and my rock. I want to thank my mother, Karen Crytzer, as well. She's a strong woman and the most big-hearted person I know. I also want to recognize my father, Jim Crytzer, who passed away unexpectedly in 2014.

My family moved to Tennessee nearly 25 years ago, and no matter how far I have traveled away since then, I've always come home to East Tennessee. Growing up, my parents instill in me and my siblings a respect for service, the importance of integrity, and a steadfast commitment to justice. These are important values that continue to guide my life and work today at the Department of Justice.

I come before this Committee as a nominee to fill the seat of the late Chief Judge Pam Reeves, the first woman to serve as a district judge for the Eastern District of Tennessee. I am grateful for her service and the trail she blazed. If confirmed, it would be the honor of a lifetime to follow Judge Reeves as the second woman to serve as a district judge for the Eastern District of Tennessee.

Thank you again for the opportunity to appear before you today. I appreciate your considering of my nomination, and I look forward to answering your questions.

Chairman GRAHAM. Thank you. The floor is yours, sir.

**STATEMENT OF CHARLES EDWARD ATCHLEY JR., NOMINEE  
TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE  
EASTERN DISTRICT OF TENNESSEE**

Mr. ATCHLEY. Thank you, sir. Thank you, Chairman Graham and Senator Durbin, for giving me this opportunity to appear before your Committee today. I'd especially like to thank President Trump for nominating me to this prestigious position. I'd also like to express my heartfelt gratitude to Tennessee Senators Alexander and Blackburn for supporting my nomination and allowing me this potential opportunity to continue to serve the good people of the Eastern District of Tennessee.

It would be very difficult to thank everyone who has played a role in helping me get to where I am today, and any attempt to do so would be a fool's errand. But I must recognize my wife of over 23 years, Catherine, for her unwavering support. She is the glue that keeps our family together, and without her I would be absolutely lost. She is watching today with her colleagues at a local church where she works as a preschool teacher.

I also want to recognize my 9-year-old daughter, Kate, who is watching today with her classmates in the fourth grade. Kate loves tennis, basketball, dance, new shoes, and spending time with her friends. She truly represents only the best of both her parents, and we're both so very proud of her.

Last, I also must mention and thank my parents, Charles and Linda, for their support of me and my sister, Krista, throughout our lives. I am certain they are watching now from their home, but as soon as this hearing concludes they will return to work, just as they have done for well over 50 years. It is this example of work ethic demonstrated by them that has benefited me more than anything else during my 25-plus years practicing law.

Thank you again for this humbling opportunity, and I am more than happy to answer any of your questions.

Chairman GRAHAM. Well, to help the economy we'll keep the questions short, so they can get back to work.

One congratulations to all of you and your families. I know this is a big day in your life.

The bottom line for me, having been a lawyer and been in court a few times, I always wanted to go before a judge that I thought would be fair but also kind. Most of the people appearing before you, whether you're in the court of claims or in the district court, it's a pretty traumatic day in their life, and lawyers can be hand-fuls. How do you maintain control over your court, and at the same time, show a sense of kindness and compassion to put people at ease? How do you keep control of the litigation, make sure that it moves forward, but also, at the same time, making sure that you have the patience to hear out both sides of the case?

Let's start with you, Zach.

Mr. SOMERS. Sure. I think, you know, the issue you raise is very important. You know, for a lot of people you might get involved in one case throughout your entire lifespan, and a lot of people never even go to court. But for those that do, to have a judge that's fair, that hears what you have to say, even if, at the end of the day, the judge decides against you, I think is very important.

So I think you have to be stern. You have to, you know, keep the lawyers in check, if necessary, but you also have to be fair, you have to be even, and you do have to be kind, to both sides, whether you're going to ultimately find in their favor or not.

Chairman GRAHAM. Mr. Dawson.

Mr. DAWSON. Senator, first of all, I would agree with my co-nominee's comments, but I would also add that it starts with respect. I think if you respect people you can manage a courtroom, because you can manage emotions, because you will be sensitive to them. And if you're long-suffering you recognize the ebbs and flows that go on in a day. And so I think the foundation should start with just respecting people for who they are, and you'll have the patience to deal with them.

Chairman GRAHAM. Good.

Ms. CRYTZER. Senator Graham, I agree with my co-nominees. I think it's important to have integrity, to be objective, to be kind, to be fair, but to be orderly, so that everyone that comes before you has their day in court, they feel that that day was fair, that they were heard, and that justice was done.

Mr. ATCHLEY. Senator Graham, all good points from my co-nominees, and I agree with them all. I would add that in addition to that, the integrity, and also the work ethic, and to making sure things move at an appropriate pace while still respecting everyone that appears before you. And allowing the justice system to move efficiently is also an important part of that.

Chairman GRAHAM. Well, the lives you've led in the law and outside the law have allowed you to reach this day, to be seen by people in power, to feel like you would be an appropriate person to serve in a position of responsibility in our independent judiciary. And I'm very proud for you. I think you are all highly qualified and I think you would do a good job. What I like most about America is the idea that no matter where you come from, in theory you're supposed to get a fair shake in court. You're not too big to be sub-

ject to the law, and the rich pay only because they should, not because they can, and the most unpopular will be heard too.

So let's keep that spirit of the law alive during challenging times. As we wind down 2020, I hope we understand that this has been a traumatic year, but to count our blessings. In spite of all of our contention there are blessings out there, and one of the great blessings of America is an independent judiciary. Let's all keep it that way.

Anyone else? Senator Whitehouse, are you there?

[No response.]

Chairman GRAHAM. Okay. Anyone else from the Committee?

Thank you all. Have a safe and happy holiday.

Hello? Anybody? Senator Kennedy? Anybody? Okay. Last call. Okay.

Anyway, have a great holiday season and I hope you enjoy the new career, and I'm sure it is going to work out for everybody. Thank you very much.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Charles Edward Atchley, Jr.

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

United States District Judge for the Eastern District of Tennessee

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

Office: United States Attorney's Office  
Eastern District of Tennessee  
800 Market Street, Suite 211  
Knoxville, Tennessee 37902

Residence: Knoxville, Tennessee

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

1966; Knoxville, Tennessee

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

1990 – 1993, Cumberland School of Law, Samford University; J.D., 1993

1985 – 1989, University of Tennessee; B.A., 1989

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

2001 – Present  
United States Attorney's Office

800 Market Street; Suite 211  
Knoxville, Tennessee 37902  
Assistant United States Attorney  
First Assistant U.S. Attorney (2018 – Present)  
Supervisory AUSA (2006 – 2018)  
Assistant United States Attorney (2001 – Present)

1994 – 2001  
Office of the District Attorney General  
125 Court Avenue; Suite 301-E  
Sevierville, Tennessee 37862  
Assistant District Attorney General

1994  
Scott & Associates  
101 East Main Street  
Sevierville, Tennessee 37862  
Associate

1993 – 1994  
Family Inns of America  
3124 Tammy King Road  
Pigeon Forge, Tennessee 37868  
Staff Attorney

1992 – 1993  
Office of the District Attorney  
801 21st Street North  
Birmingham, Alabama 35203  
Law Clerk

1992  
Gorham & Waldrep  
2102 6th Avenue North; Suite 700  
Birmingham, Alabama 35203  
Summer Law Clerk

1991  
Dugan's  
2011 Highland Avenue  
Birmingham, Alabama 35205  
Waiter

1990  
Ruby Tuesday  
3051 Mall Road North

Knoxville, Tennessee 37924  
Waiter

1989-1990  
Jefferson Amusement Company  
301 East Jefferson Street  
Jefferson City, Tennessee 37760  
Family Business – Assisted Father

Other Affiliations (uncompensated):

2016 – Present  
Zoo Knoxville  
3500 Knoxville Zoo Drive  
Knoxville, Tennessee 37914  
Board Member

2008 – Present  
East Tennessee Historical Society  
601 South Gay Street  
Knoxville, Tennessee 37902  
Board Member

2006 – Present  
Sevier County Public Library Foundation  
408 High Street  
Sevierville, Tennessee 37862  
President (2012 – Present)  
Board Member (2006 – Present)

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.

June – July 1990, United States Marine Corp, Officer Candidate, Medical Discharge for training injury

I registered for the selective service upon turning 18.

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

F.B.I. Outstanding Counterintelligence Investigation of the Year (2018)



Personal Commendation from F.B.I. Director Robert S. Mueller, III (2006)

Department of Justice Sustained Superior Performance Award (2009 – 2019)

John Cabler Corbett Scholarship recipient (1991 – 1992)

Cordell Hull Speakers Forum (1993)

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 (1993 – 1996)

Hamilton Burnett American Inn of Court (2006 – Present)  
President (2011 – 2012)

Knoxville Bar Association (1993 – Present)  
Board of Governors (2014)  
Membership Committee (2005 – Present)  
Barristers Executive Committee (2000)

Knoxville Bar Foundation (2013 – Present)

National Association of Assistant United States Attorneys (2001 – Present)

National District Attorneys Association (1995 – 2001)

Sevier County Bar Association (1993 – Present)

Tennessee Bar Association (2000 – 2004, 2009)

10. **Bar and Court Admission:**

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

Alabama, 1993

Georgia, 1993

Tennessee, 1994

There have been no lapses in membership.

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

special admission to practice.

Supreme Court of the United States; 1997

United States Court of Appeals for the Sixth Circuit; 1996

United States District Court for the Eastern District of Tennessee; 1995

There have been no lapses in membership.

11. **Memberships:**

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

Board of Advisors, University of Tennessee, History Department (2014 – Present)

Chancellor's Associates, University of Tennessee (2017 – 2020)

Cherokee Country Club (2013 – Present)

Downtown Rotary Club of Knoxville (2014 – 2020)

East Tennessee Historical Society (1993 – Present)

Friends of the Great Smoky Mountains (2000 – Present)

Leadership Sevier (2011 – Present)

Sequoyah Hills-Kingston Pike Association (2010 – Present)

Sequoyah Hills Preservation Society (2010 – Present)

Sigma Phi Epsilon Fraternity (1985 – 1989)

Smoky Mountain Historical Society (1995 – 2015)

U.S. District Court Historical Society, President (2012 – 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.

Sigma Phi Epsilon Fraternity is a college social fraternity that limits its membership to men. I was a member during my time at the University of Tennessee. It is an officially recognized fraternity on the university campus.

The Cherokee Country Club is a private country club. Throughout the time I have been a member, the Club has not discriminated on the basis of race, sex, religion, or national origin, either formally or informally. I am aware that, regrettably, there was a time more than a decade before I became a member when the Club lacked diversity and, either formally or informally, enforced discriminatory membership policies. By the time I became a member in 2013, however, the Club's diverse membership fully reflected the Club's formal policies against discrimination on the basis of race, sex, religion, or national origin.

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.

With Angelia Morie Nystrom, *Project Safe Childhood: Working To Make Internet Usage Safer For Our Children*, DICTA, March 2008, Volume 35, Issue 3. 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.

December 20, 2019, Speaker, *"Everything I Ever Learned About Legal Ethics and Professionalism, I Learned from Hollywood"* (or: *Chuck and Nick Go Back to the Movies—Part V*), Seminar on Professionalism and Ethics for Government Attorneys, Knoxville, Tennessee. PowerPoint supplied.

November 20, 2019, Panelist, *Everything You Wanted To Know About Law School (But Were Afraid To Ask)*, sponsored by the University of Tennessee History Department and the College of Law. I discussed with undergraduates what to expect in law school and career options after graduation. The address of the University of Tennessee College of Law is 1505 Cumberland Avenue, Knoxville, Tennessee 37996.

March 29, 2019, Speaker, *The Work of the U.S. Attorney's Office*, Lincoln Memorial University, Duncan School of Law. I spoke to a criminal law class about the mission of the U.S. Attorney's Office and the work that we do. I have no notes, transcripts, or recording. The address of the Duncan School of Law is 601 W. Summit Hill Drive, SW, Knoxville, Tennessee 37902.

December 07, 2018, Speaker, *"Everything I Ever Learned About Legal Ethics and Professionalism, I Learned from Hollywood"* (or: *Chuck and Nick Go Back to the Movies—Part IV*), Seminar on Professionalism and Ethics for Government Attorneys, Knoxville, Tennessee. PowerPoint supplied.

September 26, 2018, Presenter, Case Presentation, sponsored by the Baker Center at the University of Tennessee. I discussed the prosecution of Szuhisiung Ho and Ching Guey. PowerPoint supplied.

April 12, 2018, Panelist, *"When To Go Low Tech & When To Go High Tech,"* CLE sponsored by the Knoxville Bar Association. I have no notes, transcripts, or recording. I discussed the use of technology during courtroom presentation. The address of the Knoxville Bar Association is 505 Main Street SW #50, Knoxville, Tennessee 37902.

December 15, 2017, Speaker, *"Everything I Ever Learned About Legal Ethics and Professionalism, I Learned from Hollywood"* (or: *Chuck and Nick Go Back to the Movies—Part III*), Seminar on Professionalism and Ethics for Government Attorneys, Knoxville, Tennessee. PowerPoint supplied.

September 26, 2017, Speaker, *Direct Examination*, Lincoln Memorial University, Duncan School of Law, Knoxville, Tennessee. I spoke to a trial advocacy class on direct examination. PowerPoint supplied.

September 6, 2017, Presenter, Case Presentation, Academic Alliance Conference sponsored by Michigan State University. I discussed the prosecution of Szuhiung Ho and Ching Guey. I used the same PowerPoint as for the September 26, 2018, presentation.

July 20, 2017, Panelist, *Effective Practices: Relationships with the JTTF and 415 File Reviews*, Managing the National Security/ATAC Program and National Security Investigations in U.S. Attorneys' Offices Seminar sponsored by the Department of Justice National Advocacy Center. I discussed relationships with the FBI JTTF and conducting 415 file reviews. I have no notes, transcripts, or recording. The address of the Ernest F. Hollings National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 29, 2017, Speaker, *The Work of the U.S. Attorney's Office*, Lincoln Memorial University, Duncan School of Law. I spoke to criminal law class about the mission of the U.S. Attorney's Office and the work that we do. I have no notes, transcripts, or recording. The address of the Duncan School of Law is 601 W. Summit Hill Drive, SW, Knoxville, Tennessee 37902.

March 9, 2017, Presenter, Case Presentation, National Security Seminar on Export Control, Counterproliferation, and Counterintelligence sponsored by the Department of Justice National Advocacy Center. I discussed the prosecution of Szuhiung Ho and Ching Guey. I used the same PowerPoint as for the September 26, 2018, presentation.

December 16, 2016, Speaker, *"Everything I Ever Learned About Legal Ethics and Professionalism, I Learned from Hollywood"* (or: *Chuck and Nick Go Back to the Movies*), Seminar on Professionalism and Ethics for Government Attorneys, Knoxville, Tennessee. PowerPoint supplied.

Summer of 2016, Speaker, *The Work of the U.S. Attorney's Office*, Downtown Rotary Club of Knoxville, Tennessee. I spoke about the mission of the U.S. Attorney's Office and the work that we do. I have no notes, transcripts, or recording. The mailing address of the Rotary Club is P.O. Box 166, Knoxville, Tennessee 37901.

May 27, 2016, Speaker, *The Work of the U.S. Attorney's Office*, Kiwanis Club of Kingsport, Tennessee. I spoke about the mission of the U.S. Attorney's Office and the work that we do. I have no notes, transcripts, or recording. The mailing address of the Kiwanis Club of Kingsport is P.O. Box 33506, Kingsport, Tennessee 37664.

December 13, 2013, Speaker, "*Everything I Ever Learned About Legal Ethics and Professionalism, I Learned from the Movies*", Seminar on Professionalism and Ethics for Government Attorneys, Knoxville, Tennessee. PowerPoint supplied.

October 18, 2012, Speaker, *U.S. Attorney's Office, Eastern District of Tennessee*, Sevier County Bar Association, Sevierville, Tennessee. I spoke about the current staffing of the U.S. Attorney's Office and our work. PowerPoint supplied.

From 2006 until 2011, as Project Safe Childhood Coordinator for our district, I spoke about the program and internet safety to various churches, schools, and parent and civic groups. My talks were delivered extemporaneously and I kept no notes.

May 4, 2011, Speaker, *Project Safe Childhood*, Gatlinburg Law Enforcement Conference. I spoke about the Project Safe Childhood program. I have no notes, transcripts, or recording. The address of the Gatlinburg Law Enforcement Conference is 800 Market Street, Suite 211, Knoxville, Tennessee 37902.

August 31, 2010, Speaker, *Project Safe Childhood*, Knoxville Downtown Sertoma Club. I spoke about the Project Safe Childhood program. I have no notes, transcripts, or recording. The address of the Knoxville Downtown Sertoma Club is 747 World's Fair Park Drive, Knoxville, Tennessee 37902.

September 16, 2008, Speaker, *Project Safe Childhood*, training sponsored by the Children's Advocacy Center of Sullivan County. I spoke about the Project Safe Childhood program. I have no notes, transcripts, or recording. The address of the Children's Advocacy Center of Sullivan County is 150 Blountville Bypass, Blountville, Tennessee 37617.

April 25, 2008, Speaker, *Project Safe Childhood*, Child Abuse Prevention Conference sponsored by the Chattanooga Children's Advocacy Center (now the Children's Advocacy Center of Hamilton County). I spoke about the Project Safe Childhood program. I have no notes, transcripts, or recording. The address of the Children's Advocacy Center of Hamilton County is 5705 Uptain Road, Chattanooga, Tennessee 37411.

March 4, 2007, Speaker, *Project Safe Childhood*, St. Stephen's Episcopal Church. I spoke about the Project Safe Childhood program. I have no notes, transcripts, or recording. The church is located at 212 North Tulane Avenue, Oak Ridge, Tennessee 37830.

- 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 interviews given to newspapers, magazines or other publications, or radio or television stations. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

*China: A New World Order* Series 1, Episode 3 (BBC Two television broadcast in the United Kingdom October 3, 2019, not broadcast in the United States). Copy supplied.

Steve Marion, *Atchley Learned the Value of Hard Work Early*, Standard Banner, (Jefferson City, Tenn.), Feb. 23, 2017. Copy supplied.

Jamie Satterfield, *Armstrong Guilty of Filing False Tax Return*, Knoxville News Sentinel (Tenn.), Aug. 9, 2016. Copy supplied.

Jamie Satterfield, *Armstrong Guilty of One Felony Count*, The Tennessean, (Nashville, Tenn.), Aug. 9, 2016. Copy supplied.

*State Rep. Joe Armstrong Found Guilty of Filing a False Tax Form*. (WBIR broadcast Aug. 8, 2016). Video and article available at <https://www.wbir.com/article/news/local/state-rep-joe-armstrong-found-guilty-of-filing-a-false-tax-form/290869611>.

*Tennessee State Rep. Joe Armstrong Found Guilty of Fraud*, WATE broadcast Aug. 8, 2016. Video and article available at <https://www.wate.com/news/local-news/tennessee-state-rep-joe-armstrong-found-guilty-of-fraud/>.

*Prosecutor Charles Atchley Discusses Joe Armstrong Verdict*, Knoxville News Sentinel broadcast Aug. 8, 2016. Video available at <https://www.youtube.com/watch?v=QSKbbJMqALs>.

Jamie Satterfield, *Detective: Decade-long Quest for Justice in Gatlinburg Murders "Finally Over"*, Knoxville News Sentinel (Tenn.), Jan. 10, 2013. Copy supplied.

Jamie Satterfield, *Hiker Cleared in Death of Black Bear – New Evidence Cited in Case Against Photographer*, Knoxville News Sentinel (Tenn.), Oct. 19, 2010. Copy supplied.

Nick McCall, *The Last Word*, DICTA, (Knoxville Tenn.), May 2010. Copy supplied.

Jamie Satterfield, *Local, National and Global Efforts Track Sex Offenders Who Prey on Children*, Knoxville News Sentinel (Tenn.), May 18, 2008. Copy supplied.

Jamie Satterfield, *Child Molester Gets Life Sentence*, Knoxville News Sentinel (Tenn.), Oct. 18, 2007. Copy supplied.

Staff Writer, *8 E. Tenn. Men Arrested on Child Porn Charges*, Associated Press, (Tenn.), Aug. 25, 2007. Copy supplied.

Staff Reports, *Child Porn Bust Nets Louisville Man*, Daily Times (Maryville, Tenn.), Aug. 25, 2007. Copy supplied.

Jim Balloch, *Man Changes His Name but not Predatory Nature*, Knoxville News Sentinel (Tenn.), Mar. 16, 2007. Copy supplied.

Duncan Mansfield, *Former Judge Sentenced to 42 Months for Extortion*, Chattanooga Times Free Press (Tenn.), Sept. 8, 2006. Copy supplied.

Ray Snader, *Atchley Receives Few Election Complaints*, Citizen Tribune, (Morristown, Tenn.), Aug. 8, 2006. Copy supplied.

Staff Writer, *Authorities Investigate Wreck by Former Judge*, The Associated Press State and Local Wire, Apr. 7, 2006. Copy supplied.

Staff Writer, *Campbell Case Illustrates Importance of Law*, Knoxville News Sentinel (Tenn.), July 19, 2005. Copy supplied.

Jamie Satterfield, *One by One, Ex-cops Face Judge's Justice – Apologies and Tears Mark Final Chapter in Police Brutality*, Knoxville News Sentinel (Tenn.), July 14, 2005. Copy supplied.

Ben Benton, *City Detective Undercover for Years in Hooker Sting*, The Daily Post-Athenian (Tenn.), October 27, 2003. Copy supplied.

Jamie Satterfield, *Developer Convicted in Spa Racket*, Knoxville News Sentinel (Tenn.), Oct. 24, 2003. Copy supplied.

Georgiana Vines, *Official Will Hear Charges of Suspected Election Fraud*, Knoxville News Sentinel (Tenn.), Nov. 4, 2002. Copy supplied.

Penny Bandy, *Prosecutor Joins Federal Staff*, Standard Banner, (Jefferson City, Tenn.), Dec. 13, 2001. Copy supplied.

Penny Bandy, *Prosecutor Joins Federal Staff*, The Mountain Press, (Sevierville, Tenn.), Oct. 19, 2001. Copy supplied.



Staff Writer, *Police ID Millionaire Contestant as Fugitive*, National Examiner, (Boca Raton, Fla.), Apr. 4, 2000. Copy supplied.

Bill Hoffmann, *Man Stars in "Who Wants to Make Bail?"*, New York Post, (New York, N.Y.), Mar. 15, 2000. Copy supplied.

Penny Bandy, *Stabbing Sent to Grand Jury*, The Mountain Press, (Sevierville, Tenn.), Feb. 19, 2000. Copy supplied.

Jim Lynch, *Ex-pastor Sentenced to 18 Months in Jail for Statutory Rape*, The Mountain Press, (Sevierville, Tenn.), Apr. 13, 1997. Copy supplied.

Randy Kenner, *Court Upholds '96 "DUI by Consent" Jury Conviction*, Knoxville News Sentinel (Tenn.), Jan. 24, 1997. Copy supplied.

Lara Turner, *Judge Throws Out Civil Suit Against Schmutzer's Office*, The Mountain Press, (Sevierville, Tenn.), Jan. 13, 1997. Copy supplied.

Darrell Manis, *Drug Raid Nets LSD, Valium, Marijuana*, Tennessee Star Journal, (Pigeon Forge, Tenn.), Oct. 4, 1996. Copy supplied.

Staff, *Blind Man Guilty of Drug Dealing, Fined \$1.2 Million*, Knoxville News Sentinel (Tenn.), Oct. 4, 1996. Copy supplied.

Staff, *Atchley Joins Office as New Prosecutor*, Knoxville News Sentinel, (Tenn.), Sept. 14, 1994. Copy supplied.

Lara Turner, *Robber Gets Virtual Life Sentence*, The Mountain Press, (Sevierville, Tenn.), Date unknown. Copy supplied.

Chip Miller, *Arkansas Mother Who Left Baby Here Charged with Child Neglect*, The Mountain Press, (Sevierville, Tenn.), Date unknown. Copy supplied.

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

I have not served as a judge.

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

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]

civil proceedings: \_\_\_\_\_ %  
 criminal proceedings: \_\_\_\_\_ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
  - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
  - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

I have not held public office. I have 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.

None.

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

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

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

I have not served as a law clerk.

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

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or

governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993 – 1994  
Family Inns of America  
3124 Tammy King Road  
Pigeon Forge, Tennessee 37868  
Staff Attorney

1994  
Scott & Associates  
101 E. Main Street  
Sevierville, Tennessee 37862  
Associate

1994 – 2001  
Office of the District Attorney General  
125 Court Avenue; Suite 301-E  
Sevierville, Tennessee 37862  
Assistant District Attorney General

2001 – Present  
United States Attorney's Office  
800 Market Street; Suite 211  
Knoxville, Tennessee 37902  
Assistant United States Attorney  
Supervisory AUSA, 2006 – 2018  
First Assistant U.S. Attorney, 2018 – Present

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

I have never been a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1993 to 1994, I worked as a staff attorney with Family Inns of America. I reviewed construction and purchasing contracts, performed legal research, and tracked all litigation handled by outside counsel.

In 1994, I worked with Scott & Associates where I worked as an associate.

Our practice was commercial and banking litigation. I performed legal research and was responsible for drafting and reviewing documents.

From 1994 to 2001, I served as an Assistant District Attorney General for the 4th Judicial District of Tennessee. In this role, I prosecuted hundreds of cases for violations of a wide array of Tennessee crimes. These included homicides, sexual assaults, violent assaults, arsons, burglaries, robberies, thefts, narcotic offenses, vehicular homicides and assaults, driving under the influence offenses, and other assorted crimes. I was responsible for cases in all four counties of the district and I would travel to cover dockets in every county. I was responsible for every part of the cases, from arrest, through the preliminary hearing and grand jury stage, to prosecution in the court of record. During this period, it was not unusual for me to conduct a jury trial in a county one day and then conduct another trial the next day in another county. On multiple occasions, it was necessary for me to conduct two jury trials on the same day. I do not believe I can accurately quantify the number of cases I prosecuted during this period.

Since October 2001, I have been an Assistant United States Attorney in the Eastern District of Tennessee. In this role, I have prosecuted a wide array of federal crimes. These included complicated frauds and swindles, public corruption and election frauds, narcotics and firearms offenses, money laundering and tax offenses, child exploitation and pornography offenses, immigration violations, cases related to both international and domestic terrorism, cyber and computer crimes, espionage, export control and other national security related matters, and other assorted crimes. I am responsible for every part of my cases, from investigation through arrest, indictment, and trial. I am also responsible for my own appeals and have authored and argued numerous cases before the Sixth Circuit. Beginning in 2006, I supervised other AUSAs in addition to carrying a caseload. This would require me to review and approve all indictments and plea agreements. I would also review and offer input into case strategy and motion, trial, and appellate practice. Additionally, from 2008 until 2019, I served as the district's national security coordinator. Since February 2018, I have served as the First Assistant United States Attorney. In this role, I am responsible for overseeing a staff of over 50 AUSAs and SAUSAs and over 60 support staff and contractors. I am responsible the criminal, civil, appellate and administrative divisions district wide. I also act as counsel to the U.S. Attorney on cases, policy, and other matters.

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

While at Family Inns of America, I represented the company. While at Scott & Associates, my typical clients were local business owners and banks. As an Assistant District Attorney General, I represented the State of Tennessee.

Since joining the U.S. Attorney's Office, I only have represented the United States.

- 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.

Since joining the District Attorneys General's Office in 1994, 100% of my practice has been in litigation. I have appeared in court several hundred times since then. While at Family Inns of America and Scott & Associates, very little of my practice was in litigation.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 70% |
| 2. state courts of record:  | 30% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 5%  |
| 2. criminal proceedings: | 95% |

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

In over the 25 years of litigation, I have tried in excess of 50 cases to verdict in federal and state courts. For the vast majority of these cases, I was sole counsel. If I tried a case with a co-counsel, we split the responsibilities evenly. My first jury trial as an attorney was in 1994 and I was sole counsel.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 95% |
| 2. non-jury: | 5%  |

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

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of

the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *United States v. Szuhsiung Ho a/k/a Allen Ho, China General Nuclear Power Company a/k/a China Guangdong Nuclear Power Company, and Energy Technology Int.*, 3:16-cr-46 (E.D. Tenn.) and *United States of America v. Szuhsiung Ho, a/k/a Allen Ho*, 16-6561 (6<sup>th</sup> Cir.).

The defendants conspired to steal protected and controlled U.S. nuclear technology used in the production and development of special nuclear material to benefit both military and civilian applications on behalf of the Peoples Republic of China. The case involved a significant pre-indictment investigation over several years, which I oversaw. The indictment involved the first time this particular section of the Atomic Energy Act had been used in a prosecution and required the express written authorization of the Attorney General of the United States and notice to the Secretary of Energy. Arrest of Defendant Ho coincided with the simultaneous execution of eight search warrants across the United States. The pre-trial litigation was significant and lengthy and involved complex issues regarding the constitutionality of the statute. In addition, the defendant's detention was aggressively litigated in the district and appellate courts. After lengthy litigation, the defendant pleaded guilty and agreed to cooperate with the United States resulting in a tremendous intelligence benefit for the country. Ho was sentenced to 24 months in federal prison. I was lead counsel for the United States and responsible for all aspects of the case, including the courtroom litigation and the majority of the legal writing. For my work on this case, I received the FBI Director's Award for Outstanding Counterintelligence Investigation in 2018.

Date of Representation: 2014 – Present

Judges

Hon. Thomas A. Varlan, U.S. District Judge  
 Hon. H. Bruce Guyton, U.S. Magistrate Judge  
 Hon. Richard F. Suhrheinrich, U.S. Circuit Judges  
 Hon. Eugene E. Siler, Jr.  
 Hon. Deborah L. Cook

Co-Counsel

Casey T. Arrowood  
 Assistant U.S. Attorney  
 U.S. Attorney's Office  
 800 Market Street  
 Suite 211  
 Knoxville, Tennessee 37902  
 (865) 545-4167  
*Formerly of the National Security Division*

R. Barto Slabbekorn, Jr.  
 Department of the Navy – Office of the General Counsel  
 33000 Nixie Way  
 Building 50  
 San Diego, California 92147  
 (619) 524-5880  
*Formerly of the U.S. Attorney's Office*

Jeffery M. Smith  
 United States Department of Justice  
 National Security Division  
 950 Pennsylvania Avenue, NW  
 Suite 6521  
 Washington, DC 20530  
 (202) 532-0220

Debra A. Breneman  
 Assistant U.S. Attorney  
 800 Market Street  
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 Knoxville, Tennessee 37901  
 (865) 545-4167

Counsel for Szuhsiung Ho and ETI  
 Wade V. Davies  
 Ritchie, Dillard, Davies & Johnson  
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 Suite 300  
 Knoxville, Tennessee 37902  
 (865) 637-0661

Peter Zeidenberg  
 Arent Fox LLP  
 1717 K Street NW  
 Washington, DC 20006  
 (202) 857-6139



Defendant, China General Nuclear Power Company, has not appeared to answer the indictment.

2. *United States v. Joseph E. Armstrong*, 3:15-cr-91 (E.D. Tenn.)

The defendant was a long serving member in the House of Representatives of the Tennessee General Assembly. The defendant conspired with others to vote on and pass legislation that increased the price of Tennessee cigarette tax stamps in order to secretly profit from their sale. He and his conspirators then worked to launder and hide the profits from detection. I was lead counsel and oversaw the investigation and indictment of this case and conducted the pre-trial litigation. The trial lasted five days and the defendant was convicted of filing a false tax return that failed to report several hundred thousand dollars in profits from the conspiracy. I was lead counsel at trial and conducted *voir dire*, performed direct examination of the majority of the government's witnesses, cross examined the defendant, and performed closing argument.

Dates of representation: 2014 – 2016

Presiding Judge

Hon. Thomas W. Phillips, U.S. District Judge

Co-Counsel

Frank M. Dale, Jr.  
Assistant U.S. Attorney  
U.S. Attorney's Office  
800 Market Street  
Suite 211  
Knoxville, Tennessee 37902  
(865) 545-4167

Opposing Counsel

Gregory P. Isaacs  
The Isaacs Law Firm  
618 S. Gay Street, # 300  
Knoxville, Tennessee 37902  
(865) 673-4953

3. *United States v. Thomas Alva Austin*, 3:06-cr-3 (E.D. Tenn.)

The defendant was an elected General Sessions Judge who used his position as a judicial officer to extort money from the probation office that covered his court. In his capacity as a judge, the defendant had substantial input into who operated the probation office. He would routinely sentence individuals to a sentence of attending traffic school, which was operated by the probation office, and required payment of an attendance fee. The defendant then required the probation office to kickback

a portion of the attendance fee to him. I oversaw the criminal investigation, which included multiple undercover meetings, including at least one out of state, and multiple search warrants. The post-indictment litigation was significant, as was the sentencing litigation. The defendant pleaded guilty to three counts of Hobbs Act extortion and was sentenced to 42 months in federal prison. For my work on this case, I received a certificate of recognition from FBI Director Robert S. Mueller, III.

Dates of representation: 2005 – 2006

Presiding Judge

Hon. Thomas W. Phillips, U.S. District Judge

Opposing Counsel

Gregory P. Isaacs  
The Isaacs Law Firm  
618 S. Gay Street, # 300  
Knoxville, Tennessee 37902  
(865) 673-4953

Jerrold L. Becker  
Bunstone, Watson & Becker  
800 S. Gay Street, #2001  
Knoxville, Tennessee 37929  
(865) 523-3022

4. *United States v. William Cotton*, 1:05cr122 (E.D. Tenn.)

Cotton was a Hamilton County, Tennessee county commissioner indicted for taking bribes in exchange for facilitating the implementation of an electronic recycling service in Hamilton County. He was one of several elected officials prosecuted in this district and others in the state as the result of an investigation into public corruption known as *Tennessee Waltz*. I was co-counsel on the case and was responsible for overseeing the investigation and preparing the case for indictment and trial. At trial, I examined half the witnesses and gave the first closing argument. After five days of trial, Cotton was convicted of conspiracy to commit Hobbs Act extortion and was ultimately sentenced to 36 months in federal prison.

Dates of representation: 2005 – 2007

Presiding Judge

R. Allen Edgar, U.S. District Judge

Co-Counsel

John P. MacCoon  
U.S. Attorney's Office

800 Market Street  
Suite 211  
Knoxville, Tennessee 37902  
(865) 545-4167  
*Retired*

Opposing Counsel  
Hank Hill  
707 Georgia Avenue  
Suite 203  
Chattanooga, Tennessee 37402  
(423) 267-5430

5. *United States v. Shayne Green, William Carroll, Samuel R. Franklin, Gerald David Webber, Joshua Monday* 3:05cr11, 3:05cr12, 3:05cr13, 3:05cr14, 3:05cr15 (E.D. Tenn.) and *United States v. William Carroll*, 05-6292 (6<sup>th</sup> Cir.)

Defendants were all Sheriff's Deputies with the Campbell County, Tennessee Sheriff's Department. On the evening of July 8, 2004, the deputies went to the home of Eugene and Jenny Siler to arrest Eugene Siler for violating his probation. Eugene had a reputation in the community as a drug dealer. After arrival, the deputies instructed Jenny Siler and their child to leave the residence. The deputies then tied Eugene Siler to a chair and began to beat him to force him to consent to a search of his residence. Siler refused to consent and was beaten mercilessly, including having a firearm placed in his mouth and threatened with death, over the next two hours. Additionally, one of the deputies threatened to sexually assault him. In the end, Siler never relented but his residence was searched anyway. Afterwards, both of the Silers were arrested on manufactured charges and taken to the local jail. While in jail, Siler complained to another inmate about the beating and state law enforcement investigated the crime. State law enforcement and the local prosecutor attempted to prosecute the beating in state court but were unable to convince a local grand jury to indict the case. I instructed the FBI to obtain the evidence from local authorities and I supervised an investigation for federal civil rights violations. After the investigation, the defendants were charged with federal civil rights violations and a federal firearms charge. In addition to supervising the investigation, I conducted all of the litigation this case, including the appeal. All defendants eventually pleaded guilty and were sentenced to lengthy prison terms.

Dates of representation: 2004 – 2006

Judges  
Hon. Thomas A. Varlan, U.S. District Judge  
Hon. Boyce A. Martin, Jr., U.S. Circuit Judges  
Hon. Allen Eugen Norris  
Hon. David McKeague

Counsel for Green

Kimberly A. Parton  
8500 Rayworth Trail  
Powell, Tennessee 37849  
(865) 947-1670

Counsel for Carroll

John E. Eldridge  
Eldridge & Blakney  
400 W. Church Avenue  
Knoxville, Tennessee 37902  
(865) 544-2010

Counsel for Franklin

Andy S. Roskind  
Pratt Aycock, PLLC  
705 Gate Lane, #202  
Knoxville, Tennessee 37909  
(865) 769-6969

Counsel for Webber

W. Lee Asbury  
*Deceased*

Counsel for Monday

Dennis B. Francis  
The Francis Practice  
625 S. Gay Street, #625  
Knoxville, Tennessee 37902  
(865) 522-3327

6. *United States v. Majer Hafiz and Oscar Ivan Torres-Luna*, 3:05cr18 (E.D. Tenn.)

Hafiz and Luna were prosecuted for their role in a drug trafficking conspiracy delivering large amounts of cocaine from outside of the United States into our district. Hafiz was also charged with possessing a firearm in furtherance of the conspiracy. I prepared the entire case for trial, including preparation of the witnesses and the evidence, because my co-counsel was unavailable. At trial, I was responsible for half of the witnesses and I delivered the first closing argument. After a five-day trial, both defendants were convicted. At sentencing, Hafiz was sentenced to 211 months and Torres-Luna 72 months in federal prison. In an unusual move, the defendants demanded a speedy trial in hopes of finding the government unprepared. Only 80 days elapsed from the day of their arrests on a complaint until delivery of the jury's verdict.

Dates of representation: 2005 – 2006

Presiding Judge

Hon. R. Leon Jordan, U.S. District Judge

Co-Counsel

David C. Jennings  
Assistant U.S. Attorney  
800 Market Street  
Suite 211  
Knoxville, Tennessee 37902  
(865) 545-4167

Counsel for Hafiz

Larry S. Roberts  
Fayette County Attorney's Office  
201 East Main Street  
Suite 600  
Lexington, Kentucky 40507  
(859) 254-4941  
*Formerly of Roberts and Smith*

Counsel for Torres-Luna

Mike Whalen  
905 Locust Street  
Knoxville, Tennessee 37902  
(865) 525-1393

7. *United States v. Alvin Vonner*, 3:03cr154 (E.D. Tenn.) and *United States v. Alvin Vonner*, 05-5295 (6<sup>th</sup> Cir.). *United States v. Vonner*, 452 F.3d 560 (6<sup>th</sup> Cir. 2006), *rev'd en banc*, 516 F.3d 382 (6<sup>th</sup> Cir. 2008).

Vonner was indicted for his role in a conspiracy to distribute crack cocaine. After some pre-trial litigation, Vonner entered a guilty plea and the matter was set for sentencing. The defendant, both in court documents and in the courtroom, vigorously litigated the sentencing hearing. After sentencing, the defendant appealed to the Sixth Circuit and the court reversed, finding that the court had been procedurally unreasonable in arriving at a sentence. I felt strongly that the panel was mistaken in its interpretation of the law and sought, with the permission of the U.S. Attorney, authority from the Solicitor General to seek *en banc* review. The Sixth Circuit granted the petition and the original opinion was vacated by the *en banc* court. This case set the precedent in the circuit for procedural reasonableness at that time. I was responsible for all the litigation in the district court, drafting the briefs for the appeals, and both arguments in the appellate court.

Time of representation: 2003-2008

Judges

Hon. Thomas A Varlan, U.S. District Judge  
Hon. Danny J. Boggs, U.S. Circuit Judges  
Hon. Boyce F. Martin, Jr.  
Hon. Eugene E. Siler, Jr.  
Hon. Alice M. Batchelder  
Hon. Martha Craig Daughtery  
Hon. Karen Nelson Moore  
Hon. R. Guy Cole  
Hon. Eric L. Clay  
Hon. Ronald L. Gilman  
Hon. Julia S. Gibbons  
Hon. John M. Rogers  
Hon. Jeffrey Sutton  
Hon. Deborah L. Cook  
Hon. David McKeague  
Hon. Richard Allen Griffin

Co-Counsel

Paige Winck  
U.S. Attorney's Office  
800 Market Street  
Suite 211  
Knoxville, Tennessee 37902  
(865) 545-4167  
*Retired*

Opposing Counsel

Stephen Ross Johnson  
Ritchie, Dillard, Davies & Johnson  
606 West Main Street  
Suite 300  
Knoxville, Tennessee 37902  
(865) 637-0661

8. *United States v. David Aaron Becker*, 3:07cr10 and 3:07cr22 (E.D. Tenn.), and 07-6345 and 07-6346 (6<sup>th</sup> Cir.).

The defendant was a previously convicted sex offender from Colorado who had served a sentence in state prison for sexually assaulting several children. Upon release from prison, he changed his name and moved to Tennessee. Local and federal law enforcement received complaints of Becker making inappropriate advances towards local children and contacted me. Over a period, enough evidence was developed to obtain a federal search warrant for his residence. This executed warrant identified a substantial amount of evidence and convinced the defendant to

enter a guilty plea. Some of the evidence developed showed that the defendant had filmed himself molesting local children and streaming the images live over the internet. After a lengthy hearing, the defendant was sentenced to life in federal prison. I supervised the investigation, developed and wrote the search warrant, wrote all briefs and documents, and litigated all hearings in the district and appellate courts.

Dates of representation: 2007 – 2008

Judges

Hon. Thomas A Varlan, U.S. District Judge  
 Hon. John M. Rogers, U.S. Circuit Judges  
 Hon. David McKeague  
 Hon. Jeffrey Sutton

Opposing Counsel

Jonathan A. Moffatt  
 Federal Defender Services  
 800 S. Gay Street, #2400  
 Knoxville, Tennessee 37929  
 (865) 637-7979

9. *United States v. Jerry L. Jenkins, II*, 1:01cr160 (E.D. Tenn.) and 03-5055, 07-5521 (6<sup>th</sup> Cir.).

The defendant in this case was a right wing extremist with ties to white supremacist groups. Jenkins, and his co-conspirators, stole a supply of explosives from a local construction company in the Chattanooga area. Originally expressing his intent to sell the explosives for a profit, Jenkins later decided to use the explosives to blow up the Dade County, Georgia and Hamilton County, Tennessee jails. He also stated that he intended to blow up the offices of the Bureau of Alcohol, Tobacco, and Firearms. Following a lengthy investigation and his arrest, Jenkins was convicted after three days of trial. I prepared the case and witnesses for trial, conducted the opening statement, and conducted direct examination of half the witnesses. The trial was more difficult than usual because the defendant chose to represent himself. Jenkins was ultimately sentenced to 400 months in federal prison.

Dates of representation: 2002 – 2011

Judges

Hon. Curtis L. Collier, U.S. District Judge  
 Hon. Damon Keith, U.S. Circuit Judges  
 Hon. Cornelia G. Kennedy  
 Hon. Alice M. Batchelder  
 Hon. David McKeague  
 Hon. Jeffrey Sutton

Co-Counsel

Jeffrey E. Theodore  
ATF National Academy  
1131 Chapel Crossing Road  
Gynco, Georgia 31524  
(912) 267-3586  
*Formerly of the U.S. Attorney's Office*

Opposing Counsel

Defendant acted *pro se*  
Cynthia A. LeCroy-Schemel, *appointed as elbow counsel for trial*  
Assistant General Counsel  
Tennessee Department of Children's Services  
5600 Brainerd Road Suite C-20  
Chattanooga, Tennessee 37411  
(423) 296-1234  
*Formerly of Schemel, LeCroy-Schemel, PC*

10. *State of Tennessee v. Terry Proffitt*, 03C01-9712-CC-00530, (Tennessee Circuit Court, 4<sup>th</sup> Dist.)

The defendant was a Pigeon Forge, Tennessee police officer with a history of spousal abuse. On June 6, 1996, he murdered his ex-wife by shooting her twice with a high-powered rifle in the presence of their two minor children. At trial, the defendant asserted that the shooting was accidental and that he was suffering a mental condition that prevented him from forming the requisite intent to kill. After three days of trial, the defendant was convicted and sentenced to life in prison. I prepared the case and the witnesses for trial, conducted direct examination of the half the witnesses, and delivered the first closing argument.

Dates of representation; 1996 – 1999

Presiding Judge

Hon. Rex Henry Ogle, Circuit Court Judge

Co-Counsel

Alfred C. Schmutzer, Jr.  
500 Crofford Street  
Sevierville, Tennessee 37862  
(865) 368-1854

Opposing Counsel

James W. Greenlee



*Retired*

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

Since 2015, in my role as the National Security Coordinator for the district, I have supervised and managed the investigation and collection of evidence surrounding the terrorist attack that took place on July 16, 2015, in Chattanooga, Tennessee. Four marines and a sailor were murdered during this attack. This investigation has involved the collection and organization of information and evidence from throughout the world.

From 2002 until 2012, I managed and directed an effort to bring Russian national Yuri Solovyev to justice for the murders and dismemberment of two Russian nationals in Gatlinburg, Tennessee. Immediately after the murders, Solovyev fled the United States and returned to Russia. Russia's constitution does not provide for the extradition of its citizens, so I worked with Russian officials to prosecute Solovyev in Russia for the crimes he committed in the United States. This was a very time consuming process. Solovyev was ultimately convicted and sentenced, but the Russians have yet to disclose the details of his sentence. To my knowledge, this was the first time Russia has agreed to conduct a trial like this under the terms of our Mutual Legal Assistance Treaty with them.

As a Supervisory Assistant U.S. Attorney, and now the First Assistant U.S. Attorney, I spend considerable time and effort on case related matters in the district. I also devote considerable time and effort to working with local, state, and federal law enforcement agencies and advising the U.S. Attorney on the establishment of policies and procedures related to both criminal and civil litigation in the district.

I have never been a lobbyist.

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

I have not taught any classes.

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

for any financial or business interest.

I invest the government's Thrift Savings Plan and I am vested in the pension plan of the State of Tennessee.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I will be conflicted on any matter that is, or has been, a matter in our office, whether it is currently in litigation or not. To identify matters or parties which present an actual or potential conflict-of-interest and to address any conflict were it to arise, I would consult with the Code of Conduct for United States Judges, 28 U.S.C. § 455, and the relevant rules, practices, procedures, personnel of the District Court, the Sixth Circuit, the Administrative Office of the United States courts, and the Judicial Conference.

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

If confirmed I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

My ability to perform *pro bono* legal work has been restricted over last 25 years because of my positions as an Assistant District Attorney General and an Assistant U.S. Attorney. Because of this, I have chosen to serve my community and the disadvantaged in my personal life. Since 2006, I have served the board of Sevier County Public Library Foundation. The mission of this foundation is to raise money and fund the construction of public library facilities in the county that are desperately needed to improve literacy and access to knowledge among the disadvantaged. I devote approximately 50 hours a year to this effort.

In 2013, I was extended an invitation to join the Knoxville Bar Foundation as a Fellow. The Knoxville Bar Foundation is not for profit foundation established in 1992 to improve the administration of justice, to enhance the public's understanding of and confidence in the legal system, provide for the delivery of legal services, and to serve the legal profession through the distribution of funds. Fellows represent quality men and women practitioners in the community who have distinguished themselves in the practice of law and service and membership is by invitation only. Because of the limitation placed on me by virtue of my position as an Assistant U.S. Attorney that *pro bono* representation, I contribute financially on an annual basis to this effort.

26. **Selection Process:**

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

There is not a selection commission in this jurisdiction.

On May 22, 2019, I submitted letters to Senator Alexander and Senator Blackburn expressing my interest in this vacancy. On May 31, 2019, I was interviewed by a member of Senator Blackburn's staff. On July 12, 2019, I was interviewed by members of Senator Blackburn's staff. On August 1, 2019, I was interviewed by Senator Blackburn and members of her staff. Also on August 1, 2019, I was interviewed by a member of Senator Alexander's staff. On September 6, 2019, I

was interviewed by Senator Alexander and members of his staff. On September 19, 2019, I was interviewed by members of the White House Counsel's Office and the Department of Justice's Office of Legal Policy. On November 22, 2019, I was informed by the White House Counsel's Office that the vetting and background checks necessary for nomination would begin. Since then I have been in regular contact with the Office of Legal Policy and have also communicated with the Office of the White House Counsel.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2019

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Atchley, Charles E.	2. Court or Organization U.S. District Court, Eastern District of Tennessee	3. Date of Report 09/24/2020
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Judicial Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination      Date 09/22/2020 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2019 to 09/15/2020
7. Chambers or Office Address 800 Market Street Suite 211 Knoxville, TN 37901		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director	East Tennessee Historical Society
2. Director	Knoxville Zoo, Inc. d/b/a Zoo Knoxville
3. President/Director	Foundation for the Sevier County Public Library System
4. President	US District Court Historical Society
5.	

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

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2001	State of Tennessee: Defined Benefit Pension Plan
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
**A. Filer's Non-Investment Income**
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2019	Cherokee Country Club - Food Credit	\$4,386.00
2.		
3.		
4.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.*  
*(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2019	Sequoyah Hills Presbyterian Church
2. 2020	Sequoyah Hills Presbyterian Church
3.	
4.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.*  
*(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 7

Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Webb School of Knoxville	Tuition Agreements	K
2.			
3.			
4.			
5.			

## FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

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

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

A. Description of Assets (including trust assets)  Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Sevier County Bank cash equivalent account	A	Interest	K	T	Exempt				
2. American Express National Bank cash equivalent account	A	Interest	J	T	Exempt				
3. Citizens National Bank cash equivalent account	A	Interest	J	T	Exempt				
4. BB&T Bank cash equivalent account	A	Interest	J	T	Exempt				
5. IRA #1 (H)									
6. - American Funds New Perspective Fund	B	Dividend	K	T	Exempt				
7. - American Funds The Investment Company of America	B	Dividend	K	T	Exempt				
8. - American Funds The Growth Fund of America	A	Dividend	J	T	Exempt				
9. - American Funds Smallcap World Fund	A	Dividend	J	T	Exempt				
10. - American Funds The Bond Fund of America	A	Dividend	J	T	Exempt				
11. - Northwestern Mutual Money Market account	A	Interest	J	T	Exempt				
12. IRA #2 (H)									
13. - American Funds New Perspective Fund	A	Dividend	J	T	Exempt				
14. - American Funds The Investment Company of America	A	Dividend	J	T	Exempt				
15. - American Funds The Growth Fund of America	A	Dividend	J	T	Exempt				
16. - American Funds Smallcap World Fund	A	Dividend	J	T	Exempt				
17. - American Funds The Bond Fund of America	A	Dividend	J	T	Exempt				

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes

(See Columns C1 and D3)

3. Value Method Codes

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,001 - \$50,000

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cash (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

I11 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I12 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000



## FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Place "XY" after each asset exempt from prior disclosure	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)  Identity of buyer/seller (If private transaction)
18. IRA #3 (H)									
19. - American Funds The Investment Company of America	A	Dividend	J	T	Exempt				
20. - American Funds The Growth Fund of America	A	Dividend	J	T	Exempt				
21. - American Funds New Perspective Fund	A	Dividend	J	T	Exempt				
22. - American Funds Smallcap World Fund	A	Dividend	J	T	Exempt				
23. - American Funds The Bond Fund of America	A	Dividend	J	T	Exempt				
24. Real Property #1, Sevier County, TN	A	Rent	N	W	Exempt				

1 Income Gain Codes:

(See Columns B1 and D4)

2 Value Codes:

(See Columns C1 and D3)

3 Value Method Codes:

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P1 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cash (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

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

**FINANCIAL DISCLOSURE REPORT**

Page 7 of 7

Name of Person Reporting	Date of Report
Atchley, Charles E.	09/24/2020

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Charles E. Atchley

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		30	000	Notes payable to banks-secured (auto)		11	770
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		105	578	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		379	606
Real estate owned – see schedule	1	335	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		980	210				
Tenn. Retirement System (non-contributory; present value)			0				
Federal Retirement System		20	441	Total Liabilities		391	376
				Net Worth	2	179	853
Total Assets	2	571	229	Total Liabilities and Net Worth	2	571	229
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

American Funds The Investment Company of America	\$26,651
American Funds The Growth Fund of America	20,066
American Funds New Perspective Fund	31,335
American Funds Smallcap World Fund	15,689
American Funds The Bond Fund of America	11,837
Total Listed Securities	<u>\$105,578</u>

Real Estate Owned

Personal Residence	\$800,000
Family Farm #1	300,000
Family Farm #2 (33.3% interest)	235,000
Total Real Estate Owned	<u>\$1,335,000</u>

Real Estate Mortgages Payable

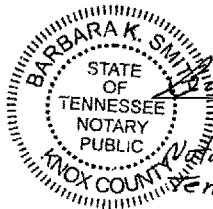
Personal Residence – Mortgage	\$249,102
Personal Residence – HELOC	26,373
Family Farm #1 - Mortgage	104,131
Total Real Estate Mortgages Payable	<u>\$379,606</u>

AFFIDAVIT

I, Charles E. Atchley, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/09/2019  
(DATE)

Charles E. Atchley Jr.  
(NAME)



Barbara K. Smith  
(NOTARY)  
Notary Public for Knox County,  
Tennessee. 12-9-2019

**Nomination of Charles Atchley Jr. to the United States District Court for the  
Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1) According to news reports, during the 2002 and 2006 elections you served as the point person in the U.S. Attorney's Office for the Eastern District of Tennessee on the Justice Department's "Voter Integrity Initiative," which had the stated purpose of combatting voter fraud. This initiative was criticized by some at the time as intended to intimidate voters from participating in elections. Then-Attorney General John Ashcroft responded, "The only people intimidated are the people who were going to cast fraudulent ballots, and that's the point here." (Jim Drinkard, *Dems Blast GOP Efforts on Voter Fraud*, USA TODAY (Oct. 24, 2002))

- a) During your time as a federal prosecutor, have you ever seen any evidence of widespread, large-scale voter fraud?**

No.

- 2) Among the top ten most significant cases that you listed on your Senate Judiciary Questionnaire was *United States v. Joseph Armstrong*, a criminal case in which the defendant was a prominent African American member of the Tennessee House of Representatives. On your Questionnaire, you noted that you served as "lead counsel and oversaw the investigation and indictment of this case and conducted the pre-trial litigation." During jury selection, you struck the only African-American in the jury pool. When this action was challenged by defense counsel, your response to the judge was that the potential juror "gave me the impression that she did not want to be here." You also mentioned her education level — she had a GED — as being one of the reasons that you did not want her to serve on the jury.

- a) In your experience, do most people who are selected for jury duty want to be there?**

In this case, the government was able to articulate several factors, including disinterest, as legitimate, race neutral reasons to exercise a peremptory challenge, as found by the district court. The truth-seeking exercise of the criminal justice system requires all jurors to be willing and engaged participants and is necessary for all parties to receive a fair and unbiased hearing.

- b) As a general matter, do you think that prosecuting African American defendants with all-white juries decreases public confidence in the criminal justice system?**

Mr. Armstrong received a fair and impartial trial before a fair and impartial jury of his peers that acquitted him of two of the three counts alleged against him in the indictment. His race, or that of anyone else, was never a factor in the trial.

3) Please respond with your views on the proper application of precedent by judges.

**a) When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

It is not appropriate for a lower court to depart from Supreme Court precedent.

**b) Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

No. A district court is required to follow all Supreme Court precedent.

**c) When, in your view, is it appropriate for a district court to overturn its own precedent?**

A district court decision is not binding and does not create precedent. *See Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011).

**d) When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

Only the Supreme Court may overturn one of its prior decisions using factors that it considers appropriate in making that decision. As a district court nominee, it would be inappropriate for me to offer an opinion when this should occur. If confirmed, I will fully and faithfully apply all Supreme Court precedent.

4) When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

**a) Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?**

All Supreme Court decisions are binding on all district courts and, if I am confirmed, I will faithfully apply *Roe v. Wade* and all Supreme Court precedent.

**b) Is it settled law?**

Yes.



- 5) In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes.

- 6) In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

**a) Do you agree with Justice Stevens? Why or why not?**

As a district court nominee, I am not permitted to express a comment, or offer an opinion, on Supreme Court decisions or dissenting opinions. *See* Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply *Heller* and all Supreme Court precedent.

**b) Did *Heller* leave room for common-sense gun regulation?**

In *District of Columbia v. Heller*, the Supreme Court acknowledged that rights secured by the Second Amendment are not unlimited and referenced "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." 554 U.S. 570, 626-27 (2008). If I am confirmed, I will faithfully apply *Heller* and all Supreme Court precedent.

**c) Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

Please see my response to Question 6(a).

- 7) In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a) Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

In *Citizens United*, the Supreme Court found that the First Amendment protected a corporation's right to engage in political speech. As a district court nominee, I am not permitted to comment further on this decision. See Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply all Supreme Court precedent.

**b) Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my response to Question 7(a).

**c) Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby, Inc.*, 573 U.S. 682 (2014), the Supreme Court provided some guidance regarding the rights of closely held corporations under the Religious Freedom Restoration Act of 1993. As a district court nominee, I am not permitted to comment further on this decision. See Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply all Supreme Court precedent.

**8) Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?**

As a district court nominee, I am not permitted to offer an opinion on this issue. See Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed I will faithfully apply the United States Constitution, and all Supreme Court and Sixth Circuit precedent.

**9) Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?**

The Supreme Court ruled in *Loving v. Virginia*, 388 U.S. 1 (1967), that state laws prohibiting interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment. Please see my response to Question 8.

**10) Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?**

Federal civil rights statutes prohibit discrimination on the basis of race in commercial transactions. If confirmed, I will faithfully apply *Loving*, all other controlling precedent, and any applicable federal statutes. As a district court nominee, I am not permitted to comment

further on this issue. *See* Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges.

- 11) Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

No, not to my knowledge.

- 12) On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years..."

- a) **Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No, not that I can recall.

- b) **Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

- c) **What are your "views on administrative law"?**

I am aware of several relevant Supreme Court decisions that relate to administrative law and I will fully and faithfully apply all binding precedents.

- 13) Do you believe that human activity is contributing to or causing climate change?

Because this is an issue about which litigation is currently pending in numerous courts around the country, and is likely to arise in the future, it would be improper for me to comment on this issue. *See* Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges.

- 14) When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has held that the text of a statute is the starting place for construing it and

that it is appropriate to consider legislative history only when the statutory text is ambiguous. *See, e.g., Milner v. Dep't of Navy*, 562 U.S. 562, 569, 572 (2011). If confirmed, I will follow all Supreme Court and Sixth Circuit precedent on the use of legislative history.

- 15) At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

- 16) Please describe with particularity the process by which you answered these questions.

I received the questions on Wednesday, November 25, 2020. I read the questions and prepared responses after conducting some legal research and reviewing my previous litigation, if it related to a question. I submitted by responses to the Department of Justice, Office of Legal Policy. I reviewed their feedback but all responses are my own.

**Nomination of Charles Edward Atchley, Jr.  
to the United States District Court for the Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

Yes, in response to your request.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

If confirmed, I will follow all binding precedent, work to uphold the rule of law, and preserve the integrity and independence of the federal judiciary. It would be inappropriate for me as a district court nominee to comment further on political or legal issues that may be the subject of litigation. *See* Canons 3 and 5 of the Code of Conduct of United States Judges.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Canon 5 of the Code of Conduct for United States Judges cautions judges to refrain from pursuing political activities. Further, Canon 2 instructs judges to avoid the appearance of impropriety and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. If confirmed, I would follow these and the remaining Canons of Judicial Conduct, without inserting my personal views into the decision making process.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a

“newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

It would be inappropriate for me as a district court nominee to comment on political matters. *See* Canon 5 of the Code of Conduct of United States Judges.

2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
  - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

Yes, to the extent that I understand the Chief Justice’s metaphor was intended to emphasize the importance of a fair and impartial judiciary. If confirmed, I am very mindful that my role in the justice system will shift from advocate to impartial decision maker. I will decide issues fairly and impartially based upon the law and the facts without regard to my personal beliefs.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Practical consequences should only be considered when required by the law.

3. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a trial judge to make a subjective determination?

When granting summary judgment, the court must find there is “no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a). The Supreme Court has held that the summary judgment standard must be construed “with due regard ... for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury,” as well as “for the rights of persons opposing such claims and defenses ...” *Celotex Corp. v. Catrett*, 477 US 317, 327 (1986). A judge is not to “weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial ... Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions ...” *Anderson v. Liberty Lobby, Inc.*, 477 US at 249-255.

4. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”
  - a. What role, if any, should empathy play in a judge’s decision-making process?

A judge must follow the law, without emotion or bias, regardless of personal opinions. That being said, it is important for a judge to never lose sight of the fact that the justice system is comprised of people that must be treated with dignity and respect at all times.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

Personal viewpoints and preferences do not play a role in judicial decision making. The role of a judge is to faithfully apply the law to all matters that come before the court.

5. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

6. The Seventh Amendment ensures the right to a jury “in suits at common law.”  
a. What role does the jury play in our constitutional system?

Trial by jury is a fundamental part of our justice system and juries play a crucial fact-finding role in it.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

Because issues relating to pre-dispute arbitration clauses are and may be litigated in federal court, it would be inappropriate for me to comment. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges.

- c. Should an individual’s Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 6(b).

7. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

When interpreting any legislation, judges should first look to the ordinary meaning of the statutory text. Only if the statute is ambiguous should the analysis continue. If the meaning of the statute cannot be determined by its text, a judge should use the canons of construction to ascertain the legislature’s intent, including by looking to the broader statutory context. Reviewing legislative history and Congressional fact-finding may be appropriate in certain cases as dictated by the law.

8. The Federal Judiciary’s Committee on the Codes of Conduct recently issued “Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates.” I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

- i. Determining whether the seminar or conference specifically targets judges or judicial employees.
- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.
- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.
- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Yes. If confirmed I will comply with all of the Canons of the Code of Judicial Conduct, carefully consider the factors listed in Advisory Opinion #116, and always thoughtfully evaluate my participation in any activity.

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to Question 8(b).

- 9. Earlier this year, the Federal Judiciary's Committee on the Codes of Conduct drafted a proposed advisory opinion concluding that a judge's ongoing "membership in . . . the Federalist Society is inconsistent with obligations imposed by the Code [of Conduct.]" After an aggressive lobbying campaign by Federalist Society-affiliated judges, the Committee ultimately voted to table the proposed opinion. In doing so, the Committee observed: "The nation depends on a judiciary that is impartial and independent. Consistent with the judge's oath, each individual judge should take care to make all membership decisions in a way that is consistent with the highest ideals of the profession as expressed in the Code of Conduct." (emphasis added.)

- a. If confirmed, do you plan to continue your membership in the Federalist Society?

I am not, nor have I ever been, a member of the Federalist Society.

- b. In the draft of Advisory Opinion #117, the Committee concluded that official affiliation with ACS or the Federalist Society "could convey to a reasonable person that the affiliated judge endorses the views and particular ideological perspectives advocated by the organization; call into question the affiliated judge's impartiality on subjects as to which the organization has taken a position; and generally frustrates the public's trust in the integrity and independence of the judiciary."
- i. Do you think the Federalist Society is an organization "that serves the interests generally of those who use the legal system, rather than the interest of any specific constituency"? Why or why not?
- ii. Do you think the Federalist Society "is generally viewed by the public as having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations"? Why or why not?
- iii. Do you believe that a judge's membership in the Federalist Society may reasonably be seen by the public as engendering indirect advocacy of the organization's political, social, or civic objectives? Why or why not?
- iv. Do you believe that reasonable members of the public would perceive a judge who has membership in the Federalist Society, a self-described group of conservatives and libertarians, to be partial or impartial? Why?
- v. The draft opinion notes "the Federalist Society's funding comes substantially from sources that support conservative political causes." Do you believe that



membership in an organization tied to such funding could give rise to the appearance of impropriety or partiality? Why or why not?

Please see my response to Question 9(a).

**Nomination of Charles Edward Atchley, Jr., to be United States District Court Judge for  
the Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has evaluated whether a right is fundamental in a series of cases. If confirmed, I will follow all Supreme Court precedents as well as any applicable Sixth Circuit precedent.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes. I will faithfully apply Supreme Court precedents and look to sources approved by the Court to help make that determination. *See Washington v. Glucksberg*, 521 U.S. 702 (1997).

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of any court of appeals?

Yes. If the right is recognized by the Supreme Court or the Sixth Circuit, I will apply the appropriate precedent. I would consider precedent from other courts of appeal.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has been recognized by any court of appeals?

Yes.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Yes. I would faithfully apply the binding precedents of *Casey* and *Lawrence*.

- f. What other factors would you consider?

I would consider all factors articulated by Supreme Court or Sixth Circuit precedents.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has held in *United States v. Virginia*, 518 U.S. 515 (1996), that the Equal Protection Clause applies to both race and gender. If confirmed, I would faithfully follow this and all applicable, binding precedent.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my response to Question 2.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I do not know why the litigation in *Virginia* did not begin until the 1990's. If confirmed, I will follow *Virginia*, and all Supreme Court precedent.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

The Supreme Court held in *Obergefell v. Hodges*, 576 U.S. 644 (2015), that same-sex couples have the right to marry just as opposite sex couples. If confirmed, I will faithfully follow *Obergefell*.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

It would be inappropriate for me as a district court nominee to comment on legal issues that may be the subject of litigation. See Canon 3(A)(6) of the Code of Conduct of United States Judges.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The Supreme Court has recognized this right in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). If confirmed, I will faithfully follow this precedent.

- a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court has held that such a right exists in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If confirmed, I will faithfully follow this precedent.

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court recognized this right in *Lawrence v. Texas*, 539 U.S. 558 (2003). If confirmed, I will faithfully follow this precedent.

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 3, 3(a) and (b).

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

- a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

The Supreme Court found in *Virginia* and *Obergefell* that current views or societal changes can be relevant. If confirmed, I would faithfully follow those and all Supreme Court precedent.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Consideration of such evidence has a role when it is relevant to a disputed issue and is reliable. *See* Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and

lesbians.”

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has stated that “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth,” *Masterpiece Cakeshop v. Colo. Civil Rights Comm’n*, 138 S.Ct. 1719, 1727 (2018). If confirmed, I will faithfully follow this and other relevant, binding Supreme Court and Sixth Circuit precedent.

- b. When is it appropriate to apply Justice Kennedy’s formulation of substantive due process?

Please see my responses to Question 1 and its subparts.

6. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93.

- a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

I believe that *Brown* was correctly decided. If confirmed, I would faithfully follow *Brown* and all Supreme Court precedent. I have not analyzed this academic issue. However, I am aware that some legal scholars have argued that *Brown* is consistent with the original meaning of the Fourteenth Amendment. See Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995).

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Nov. 25, 2020).

I have not studied this academic issue. If confirmed, I will follow the binding precedent that the Supreme Court has held applies to all constitutional provisions.

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

The Supreme Court has looked to the text, structure, and history of a constitutional

provision, including how the provision was originally understood, in interpreting it. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would faithfully follow all precedents of the Supreme Court and the Sixth Circuit.

- d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my response to Question 6(c).

- e. What sources would you employ to discern the contours of a constitutional provision?

Please see my response to Question 6(c).

**Questions for the Record for Charles Edward Atchley, Jr.  
From Senator Mazie Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:
  - a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**  
No.
  - b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**  
No.
2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.
  - a. **Do you agree that training on implicit bias is important for judges to have?**  
Yes.
  - b. **Have you ever taken such training?**  
Yes. As a Supervisory Assistant U.S. Attorney, I have participated in diversity training sessions provided by the Department of Justice that included discussions of implicit bias.
  - c. **If confirmed, do you commit to taking training on implicit bias?**  
Yes.
3. In 2002, you were involved in a Department of Justice (DOJ) voter fraud initiative under the George W. Bush administration that civil rights groups criticized as a voter intimidation effort.
  - a. **Are you aware of studies showing that voter fraud is actually incredibly rare? For example, a 2014 study found a total of 31 credible cases in 14 years, out of more than 1 billion ballots cast.**  
I have not reviewed these studies.
  - b. **Do you have any evidence showing that voter fraud is a widespread problem in the United States?**  
No.

**c. Do you believe that voter suppression or discrimination in voting currently exists?**

I have not encountered voter suppression or discrimination during my time as a federal prosecutor.

**i. If so, in addressing this problem, do you believe the Voting Rights Act should be read robustly or narrowly?**

Please see my response to Question 3(c).

4. On November 9, 2020, after the major news networks called the presidential election for Joe Biden, Attorney General Barr issued a memo to U.S. Attorneys authorizing them to pursue allegations of voting irregularities in the 2020 Election, despite no evidence of widespread voter fraud. Richard Pilger, a longtime DOJ attorney who oversees election fraud crimes, stepped down from his position in protest over this memo.

Sixteen federal prosecutors assigned to monitor election misconduct in their districts reportedly sent Attorney General Barr a letter urging him to rescind his memo, saying the “policy change was not based in fact.”

**a. Do you agree with these sixteen federal prosecutors that the Barr memo should be rescinded?**

I have not reviewed the letter sent to Attorney General Barr.

**b. Do you agree with these sixteen federal prosecutors who found no evidence of substantial irregularities in the 2020 Election?**

Please see my response to Question 4(a).

5. You joined the Cherokee Country Club in 2013 and have been a member since then. News reports have commented on its 95-year history of excluding non-white members. The country club did not admit its first Black member until 2002.



**a. Why did you join a country club with a long history of racial exclusion?**

From the time I joined Cherokee Country Club in December 2013, and throughout my membership, it has not discriminated against anyone on the basis of race, religion, national origin, sex, sexual orientation, or any other status.

**b. Since joining the country club, have you taken any actions to push the country club to increase diversity among its membership?**

I have encouraged many individuals of diverse backgrounds to join if they have expressed an interest.

6. In 2016, while prosecuting a long-serving African-American member of the Tennessee House of Representatives, Joseph Armstrong, you excluded the only Black potential juror from the jury.

**a. In trying to exclude the lone Black potential juror, you argued that she “just gave me the impression she did not want to be here” and that she “gave me the impression she was just disinterested in the issues.” And yet when the judge brought the potential juror in for additional questioning, she reportedly “responded with enthusiasm” to additional questions. What was your basis for arguing that she was ‘disinterested’ in the issues?**

In this case, the district court found that the government had legitimate, race neutral reasons for the exclusion of the potential juror and that the defendant’s *Batson* challenge was without merit.

**b. Do you believe that implicit bias in jury selection is an ongoing problem in jury selection?**

Regrettably, racism still exists in America. I am committed to issues of diversity and inclusion and, if confirmed, racism will have no place in my courtroom.

**c. In your view, how should a judge determine whether a reason given for excluding a juror is pretextual and the party has improperly excluded a juror based on race?**

If confirmed, I will follow the standard established by the Supreme Court in *Batson v. Kentucky*, 476 U.S. 79 (1986), and all other controlling precedent.

**Nomination of Charles Edward Atchley, Jr.  
United States District Court for the Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. In 2016, you prosecuted Joe Armstrong, an African-American member of the Tennessee House of Representatives, for failure to pay taxes.<sup>1</sup> In that case, you sought to remove the lone Black candidate in the jury pool. According to a news report, you claimed she appeared “disengaged” and “just gave [you] the impression she did not want to be [there].”<sup>2</sup> Later, when pressed further on your rationale for removing her from the jury pool, you cited to her lack of formal education as a reason for requesting her removal because, as you said to the judge, it was a “complicated case.”<sup>3</sup> The juror in question was a 60-year-old African American woman who had served as a home health caregiver and while she did not attend high school, she had earned a GED.<sup>4</sup> When the judge brought the jury candidate in for additional questioning, you claimed you struck her because of minor discrepancies in her questionnaire and because she was slow to understand your line of questioning designed to remove her from the pool.<sup>5</sup>

- a. Do you think it is unreasonable for a person of color to see this sequence play out in court and feel that the stated reason the lone Black candidate was removed from the jury pool was in fact pretextual?

Race is never a legitimate factor for moving to exclude a potential juror. The reasons advanced by the government were found by the district court not to be pretextual, that the government had legitimate, race neutral reasons for the exclusion of the potential juror and that the defendant’s *Batson* challenge was without merit.

- b. According to the article, you initially gave a pretty vague justification for her removal (i.e., citing her “disinterest”). Did the article correctly report that “disinterest” was your initial reason for striking this juror?

The article referenced does not accurately represent the record of the hearing before the district court. The government was able to articulate several factors as legitimate reasons to exercise a peremptory challenge in this case. Race is never a legitimate factor for moving to exclude a potential juror.

- c. When further pressed, you then cited her lack of formal education. Is it your position that a person with a GED does not have sufficient educational background to serve on a jury?

<sup>1</sup> Jamie Satterfield, *Lone black candidate in jury pool tossed from Tennessee Rep. Joe Armstrong’s trial*, TENNESSEAN (Aug. 2, 2016), <https://www.tennessean.com/story/news/crime/2016/08/02/lone-black-candidate-jury-pool-tossed-tennessee-rep-joe-armstrongs-trial/87965890/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

There are many factors, including educational background, that may demonstrate, to either party, that a potential juror is not suitable for a particular trial. However, race is never a legitimate factor.

- d. Finally, you zeroed in on a discrepancy in her questionnaire as justification for removing her from the pool and the article indicated you described her as “slow” to follow your questions. Is that true? Did you call the 60-year-old Black woman “slow” on the record?

The government was able to articulate several factors as legitimate reasons to exercise a peremptory challenge in this case. Race is never a legitimate factor for moving to exclude a potential juror. I do not recall citing “slow” as among the factors cited.

- i. If so, looking back, do you regret that characterization?

Please see my response to Question 1(d).

- e. In hindsight, do you stand by your decision to remove the sole Black candidate in the jury pool in this case about the prosecution of a Black public official?

Please see my response to Question 1(a).

- f. Were you at all worried about the appearance of impropriety in removing the lone Black candidate in the jury pool when trying a Black defendant?

Please see my response to Question 1(a).

- g. We are an incredibly diverse country, and confidence in our criminal justice system is bolstered when that diversity is reflected in those who serve in our justice system—whether it is a judge, police officer, or member of a jury. Do you agree with that statement?

Yes.

- i. In this instance, do you think the public’s confidence in Mr. Johnson’s case was undermined by the fact that it was decided by an all-white jury, with the one Black potential juror having been removed? If not, please explain.

Please see my response to Question 1(a). Mr. Armstrong received a fair and impartial trial before a fair and impartial jury of his peers that acquitted him of two of the three counts alleged against him in the indictment.

- 2. During the course of your career at the United States Attorney’s Office, have you ever been accused of displaying bias based on race, gender, or sexual orientation? If so, please detail for the Committee the allegations, whether they were investigated, and any disciplinary action taken in light of the allegations.

No.

3. Since 2013, you have been a member of the Cherokee Country Club.<sup>6</sup> According to your Judiciary Committee Questionnaire, you wrote that you are “aware that, regrettably, there was a time more than a decade before I became a member when the Club lacked diversity and, either formally or informally, enforced discriminatory membership policies.”<sup>7</sup> The club’s history of discrimination is well known. For instance, the University of Tennessee’s first Black basketball coach, Wade Houston, was denied membership to the Cherokee Country Club in 1989 even though membership customarily came with the head basketball coach position.<sup>8</sup>

In response to this incident, the University of Tennessee president at the time, Lamar Alexander, urged the school’s football coach and athletic director to resign the university-paid membership.<sup>9</sup> As now-Senator Alexander said then, “The university cannot be a party to any membership of any organization that even raises the possibility that a white coach can be treated one way and a black coach another.”<sup>10</sup>

- a. In your Questionnaire, you said, “By the time I became a member in 2013, however, the Club’s diverse membership fully reflected the Club’s formal policies against discrimination on the basis of race, sex, religion, and national origin.” If that is the case, what percentage of the club’s membership was Black when you joined? What percentage of the club’s membership was non-white when you joined?

I do not know what percentage of the membership identifies with a particular race. When I joined, race was not part of the application process.

- b. Did you ever attend any events at the club prior to joining in 2013? Please provide a list of the events and the date of attendance to the committee.

Prior to my joining in December 2013, the only events I recall attending at Cherokee Country Club were fundraising dinners hosted by the Friends of the Great Smoky Mountains National Park to raise money for the national park. This event, known as the Evergreen Ball, is not always held at Cherokee Country Club and has been held at other venues in the past.

- c. When do you believe the Cherokee Country Club ceased discriminating against people on the basis of race?

Cherokee Country Club has not engaged in any discriminatory practices since I have been a member and, to my knowledge, had not done so for more than a decade prior to my becoming a member.

<sup>6</sup> SJQ at p. 5.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Erik Schelzig, *AG Herbert Slatery’s inclusion in past all-white club shrugged off*, TENNESSEAN (Sept. 30, 2014), <https://www.tennessean.com/story/news/politics/2014/09/30/ag-herbert-slaterys-inclusion-in-past-all-white-club-shrugged-off/16486271/>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

- d. Former Senate Majority Leader Bill Frist resigned from the Cherokee Country Club in 1994, before running for office because, he said, it left a negative impression on voters. Do you think a judge should be a member of a club with a discriminatory past because of the impression it may leave on litigants?

It has been reported in the media that Senator Frist resigned from Belle Meade Country Club, located in Nashville, in 1994. I am not, nor have I ever been, affiliated with Belle Meade Country Club. I am unaware of Senator Bill Frist ever being a member of Cherokee Country Club.

Regrettably, many institutions, including private organizations, businesses, colleges and universities, government departments, and even our own armed services have a discriminatory past. Cherokee Country Club does not discriminate against anyone on the basis of race, religion, national origin, sex, sexual orientation, or any other status and I would not be a member of any club or organization that did.

- e. In 2011, a panel of federal judges said that a bankruptcy judge's membership in the Cherokee Country Club violated the judiciary's code of ethics because it never had a woman or a Black person with membership privileges. Do you think those same concerns are not present today? If not, please explain why.

In 2011, the media reported this occurring regarding the membership in Belle Meade Country Club of a bankruptcy judge in Nashville. I am unaware of a panel of federal judges ever issuing any statement regarding membership in Cherokee Country Club. Cherokee Country Club does not discriminate against anyone on the basis of race, religion, national origin, sex, sexual orientation, or any other status.

4. In 2002, the Department of Justice announced the creation of the "Voter Integrity Initiative," to combat supposed voter fraud. Harry Mattice, then the U.S. Attorney for the Eastern District of Tennessee, appointed you to lead the Voter Integrity Initiative in the district.<sup>11</sup> And, in 2006, you were again tapped to lead the Department of Justice's efforts in the Eastern District of Tennessee to combat voter fraud.<sup>12</sup>

- a. In 2002, how many cases of voter fraud did your team prosecute in the Eastern District of Tennessee?

I do not recall any prosecutions.

- b. In 2006, how many cases of voter fraud did your team prosecute in the Eastern District of Tennessee?

I do not recall any prosecutions.

<sup>11</sup> Georgiana Vines, *Official Will Hear Charges of Suspected Election Fraud*, KNOXVILLE NEWS (Nov. 4, 2002) (SJQ Attachment 12(c) at pp. 299-301)

<sup>12</sup> Ray Snader, *Atchley Receives Few Election Complaints*, CITIZEN TRIBUNE (Aug. 8, 2006) (SJQ Attachment 12(c) at p. 285).

- c. Do you believe that in-person voter fraud is a widespread problem in American elections?

I do not have knowledge of what is occurring in other districts or other parts of the country regarding this issue.

5. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

I am reluctant to label myself an originalist or a textualist because these terms mean different things to different people. If confirmed, I would follow all Supreme Court and Sixth Circuit precedent and apply the original public meaning in interpreting text. I believe this approach is consistent with the Constitution and the judiciary's role.

6. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

Please see my response to Question 5.

7. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

Yes, the Supreme Court has held that the text of a statute is the starting place for construing it and that it is appropriate to consider legislative history only when the statutory text is ambiguous. *See, e.g., Milner v. Dep't of Navy*, 562 U.S. 562, 569, 572 (2011). If confirmed, I will follow all Supreme Court and Sixth Circuit precedent on the use of legislative history.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my response to Question 7(a) above.

8. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

I believe that judicial restraint is an important component of judging. I understand judicial restraint to mean that a judge will adhere to the limited nature of the judicial role, deciding cases by applying the law and facts to the parties before the court, and refrain from reaching unnecessary issues or imposing the judge's own viewpoints inappropriately.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>13</sup> Was that decision guided by the principle of judicial restraint?

As a district court nominee, I am not permitted to express a view, or offer an opinion, on Supreme Court decisions or dissenting opinions. See Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply *Heller* and all Supreme Court precedent.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>14</sup> Was that decision guided by the principle of judicial restraint?

Please see my response to Question 8(a).

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>15</sup> Was that decision guided by the principle of judicial restraint?

Please see my response to Question 8(a).

9. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>16</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>17</sup>

- a. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

As a district court nominee, I am not permitted to offer an opinion on this issue. See Canons 2(A), 3(A)(1), and 3(A)(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply the United States Constitution, and all Supreme Court and Sixth Circuit precedent to any matter before me.

- b. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my answer to Question 9(a).

10. According to a Brookings Institution study, African Americans and whites use drugs at

<sup>13</sup> 554 U.S. 570 (2008).

<sup>14</sup> 558 U.S. 310 (2010).

<sup>15</sup> 570 U.S. 529 (2013).

<sup>16</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>17</sup> *Id.*

similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>18</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>19</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>20</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>21</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

I am unfamiliar with the Brookings Institution study, however, I believe there are instances where participants in the criminal justice system have acted with implicit racial bias. Any racial bias has no place in the criminal justice system.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I have not studied the issue but, as a Supervisory Assistant U.S. Attorney, I have participated in diversity training sessions provided by the Department of Justice that included discussions of implicit bias.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>22</sup> Why do you think that is the case?

As a judicial nominee, it would not be appropriate for me to comment on matters that could be the subject of litigation in any court. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges. As a general matter, avoiding unwarranted sentencing disparities between similarly situated defendants is mandated by 18 U.S.C. § 3553(a). If confirmed, I will faithfully apply the factors from this statute—including Congress's mandate to avoid unwarranted sentencing disparities—to fashion sentences that are sufficient, but not greater than necessary to comply with the purposes of the statute.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory

<sup>18</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>19</sup> *Id.*

<sup>20</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>21</sup> *Id.*

<sup>22</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.



minimum sentences.<sup>23</sup> Why do you think that is the case?

Please see my response to Question 10(d).

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Judges have the responsibility of ensuring that bias of any kind will not be found in their courtrooms and that every defendant is treated fairly, respectfully, and with dignity.

11. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>24</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>25</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied this issue and am unable to offer an informed opinion on it.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to Question 11(a).

12. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

13. Do you believe that *Brown v. Board of Education*<sup>26</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes.

14. Do you believe that *Plessy v. Ferguson*<sup>27</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

<sup>23</sup> Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>24</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>25</sup> *Id.*

<sup>26</sup> 347 U.S. 483 (1954).

<sup>27</sup> 163 U.S. 537 (1896).

No, and the Supreme Court in *Brown* made clear that *Plessy* was wrongly decided.

15. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

16. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”<sup>28</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

The Code of Conduct for United States Judges precludes me, in my role as a judicial nominee, from commenting on the statements of political leaders. *See* Canon 5 of the Code of Conduct for United States Judges. The standards for recusal and disqualification are governed by 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and binding precedent. They do not refer to the judge’s race or ethnicity as a basis for recusal.

17. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>29</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

It is well established that the Due Process Clause applies to all “persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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<sup>28</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>29</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Katherine (Katie) Amber Crytzer

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

United States District Judge for the Eastern District of Tennessee

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

Office: United States Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, Northwest  
Washington, D.C. 20530

Residence: Alexandria, Virginia

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

1984; Texarkana, Texas

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

2006 – 2009, George Mason University, Antonin Scalia Law School; J.D., 2009 (*magna cum laude*)

2002 – 2006, Middle Tennessee State University, B.S., 2006 (*summa cum laude*)

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.

2017 – Present

United States Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, Northwest  
Washington, D.C. 20530  
Principal Deputy Assistant Attorney General (2020 – Present)  
Acting Deputy Assistant Attorney General (2019 – 2020)  
Chief of Staff (2017 – 2019)  
Acting Chief of Staff (2017)

2014 – 2017  
United States Department of Justice  
United States Attorney's Office for the Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
Assistant United States Attorney

2010 – 2014; 2009; 2008  
Kirkland & Ellis LLP  
1301 Pennsylvania Avenue, Northwest  
Washington, D.C. 20004  
Associate (2010 – 2014)  
Law Clerk (2009)  
Summer Associate (2008)

2009 – 2010  
The Honorable Raymond W. Gruender  
United States Court of Appeals for the Eighth Circuit  
111 South 10th Street  
St. Louis, Missouri 63102  
Law Clerk

2008 – 2009  
George Mason University, Antonin Scalia Law School  
3301 Fairfax Drive  
Arlington, Virginia 22201  
Research Assistant

2007  
Law Office of Virginia Vile  
211 North Union Street, Suite 100  
Alexandria, Virginia 22314  
Law Clerk

2006  
Wiley & Wilson  
2850 Eisenhower Avenue, Suite 200

Alexandria, Virginia 22314  
Administrative Assistant

Uncompensated Affiliations:

2012  
Lawyers for Romney  
Boston, Massachusetts 02101  
Part-Time Volunteer

2012  
Republican National Committee  
310 First Street SE  
Washington, DC 20003  
Part-Time Volunteer

2008  
The Honorable Gerald Bruce Lee  
United States District Court for the Eastern District of Virginia  
401 Courthouse Square  
Alexandria, Virginia 22314  
Legal Intern

2007  
United States Department of Justice  
United States Attorney's Office for the District of Columbia  
555 4th Street, Northwest  
Washington, D.C. 20001  
Legal Intern

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 the selective service.

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

Attorney General's Award for Distinguished Service (2019)

United States Attorney's Office Performance Award (2017)

United States Attorney's Office Time Off Award (2017)

United States Attorney's Office Time Off Award (2016)

United States Attorney's Office Time Off Award (2015)

Kirkland & Ellis LLP Pro Bono Service Award (2013)

Kirkland & Ellis LLP Pro Bono Service Award (2012)

Kirkland & Ellis LLP Pro Bono Service Award (2011)

George Mason University, Antonin Scalia Law School  
 George Mason University Law Review, Managing Editor (2008 – 2009)  
 Federal Bar Association Thurgood Marshall Moot Court Competition, Winner  
 and Best Oralist (2008)

Phi Kappa Phi Graduate Fellowship (2006)

Middle Tennessee State University  
 Presidential Scholar (2002 – 2006)  
 Norman L. Parks Award (2006)  
 Phi Kappa Phi Honor Society (2005)  
 Kappa Delta Sorority Dorothy Ramage Scholarship (2005)  
 Alumni Endowment Scholarship (2005)  
 Phi Eta Sigma Recognition Scholarship (2003)  
 Phi Eta Sigma Honor Society (2003)

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.

Federalist Society for Law and Public Policy Studies (2008 – Present)

10. **Bar and Court Admission:**

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

Virginia, 2009  
 District of Columbia, 2011  
 Tennessee, 2020

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Eighth Circuit, 2010

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.

Middle Tennessee State University Honors College Board of Visitors, Board Member (2013 – Present)

George Mason University, Antonin Scalia Law School Alumni Association Board, Board Member (2017 – Present)

Kappa Delta Sorority (2002 – 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.

Kappa Delta sorority is a panhellenic women's organization that limits its membership to women. There were no formal membership exclusions based on race, religion, or national origin. I have never witnessed or experienced any racially discriminatory conduct of any kind with respect to Kappa Delta. 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.

*Successfully Preparing and Filing a Qui Tam Action Under the False Claims Act*, Ky. Bench and Bar (Dec. 2016). Copy supplied.

*You're Fired! Bishop v. Wood: When Does a Letter in a Former Public Employee's Personnel File Deny a Due Process Liberty Right?*, 16 Geo. Mason L. Rev. 447 (2009). Copy supplied.

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

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.

*Hearing on the Nominations of Beth Harwell and Brian Noland to be Members of the Board of Directors, and Katherine Crytzer to be Inspector General of the Tennessee Valley Authority Testimony Before the S. Comm. on Env't & Pub. Works, Subcomm. on Clean Air & Nuclear Safety*, 116th Congress (2020).  
Written Statement for the Record supplied. Recording available at:  
<https://www.epw.senate.gov/public/index.cfm/hearings?ID=BC706CD0-0BB7-4FEB-9D09-B8E99DFC3205>.

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

November 6, 2019: Presenter, "DTOs & Gangs Operating in Prisons with Cell Phones (Contraband Cellphones in Prisons: Current Efforts and Next Steps)," United States Department of Justice, Drug Enforcement Administration, Southwest Region Organized Crime Drug Enforcement Task Force, Regional Advisory Council Meeting, San Diego, California. Notes supplied.



August 20, 2019: Presenter, "Professional Development 101," George Mason University, Antonin Scalia Law School, Arlington, Virginia. Notes supplied.

July 1, 2019: Speaker, "Pen and Pad on Fentanyl Class Scheduling," United States Department of Justice, Washington, D.C. Notes supplied.

June 26, 2019: Presenter, "Contraband Cellphones in Prisons," Association of State Correctional Administrators, 2019 ASCA on the Hill, Washington, D.C. Notes supplied.

June 18, 2019: Presenter, "Contraband Cellphones in Prisons: Current Efforts and Next Steps," United States Department of Justice, Drug Enforcement Administration, Southeast & Florida Caribbean Regions Organized Crime Drug Enforcement Task Force, Regional Advisory Council Meeting, New Orleans, Louisiana. Notes supplied.

August 17, 2017: Presenter, "Fueling Addiction – Feeding Greed: The *United States v. Lonnie Hubbard* Investigation and Prosecution," National Association of Drug Diversion Investigators (NADDI), Kentucky Training Conference, Frankfort, Kentucky. The presentation was on the investigation and prosecution of *United States v. Lonnie Hubbard*. I have no notes, transcript, or recording. The address for NADDI is 1810 York Road, Number 435, Lutherville-Timonium, Maryland 21093.

June 6, 2017: Presenter, "*United States v. Lonnie Hubbard*," National Association of Drug Diversion Investigators and NPLeX, Annual Conference, Savannah, Georgia. The presentation was on the investigation and prosecution of *United States v. Lonnie Hubbard*. I have no notes, transcript, or recording. The address for NPLeX, which now appears to be run by Appriss Health, is 9901 Linn Station Road, Suite 500; Louisville, Kentucky 40223. The address for the National Association of Drug Diversion Investigators (NADDI) is 1810 York Road, Number 435, Lutherville-Timonium, Maryland 21093.

September 14, 2016: Presenter, "Individual Accountability and the 'Yates Memorandum,'" Department of Justice, United States Attorneys' Annual Health Care Fraud Task Force Meeting, Frankfort, Kentucky. Notes supplied.

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

*Class Notes*, Middle Tennessee State University Magazine, Winter 2020. Available at <https://issuu.com/mtsumag/docs/22381mtsumagazinewinter2020>.

Clare Hymes, *DOJ pushes Congress to permanently close loophole for knock-off fentanyl*, CBS News, July 2, 2019. Available at <https://www.cbsnews.com/news/doj-pushes-congress-to-permanently-close-loophole-for-knock-off-fentanyl/>. Reported in other outlets.

James Anderson, *From the 'Boro to the Beltway*, Areté Magazine, University Honors College, Middle Tennessee State University, Spring 2019. Available at [https://issuu.com/mtsumag/docs/arete\\_spring\\_2019](https://issuu.com/mtsumag/docs/arete_spring_2019).

Courtney Gundry, *Renewable energy to be available for Middle Tennessee State U.*, Sidelines, Apr. 21, 2005. Copy supplied.

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

I have not served as a judge.

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

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_%  
bench trials: \_\_\_\_\_% [total 100%]

civil proceedings: \_\_\_\_\_%  
criminal proceedings: \_\_\_\_\_% [total 100%]

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

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

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not served as a judge.

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

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

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

On April 6, 2020, President Donald J. Trump nominated me to serve as the

Inspector General of the Tennessee Valley Authority. That nomination was withdrawn when the President nominated me to serve as a United States District Judge for the Eastern District of Tennessee.

- 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.

Lawyers for Romney, Part-time Unpaid Volunteer, Provided part-time unpaid legal counsel (2012)

Republican National Committee, Part-time Unpaid Volunteer, Provided part-time unpaid legal counsel (2012)

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 2009 to 2010, I clerked for the Honorable Raymond W. Gruender, United States Circuit Judge for the Eighth Circuit Court of Appeals.

- 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.

2010 – 2014  
Kirkland & Ellis LLP  
1301 Pennsylvania Avenue, Northwest  
Washington, D.C. 20004  
Associate

2014 – 2017  
United States Department of Justice  
United States Attorney's Office for the Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507

Assistant United States Attorney

2017 – Present

United States Department of Justice

Office of Legal Policy

950 Pennsylvania Avenue, Northwest

Washington, D.C. 20530

Principal Deputy Assistant Attorney General (2020 – Present)

Acting Deputy Assistant Attorney General (2019 – 2020)

Chief of Staff (2017 – 2019)

Acting Chief of Staff (2017)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

The majority of my legal career has been focused on civil and criminal litigation in federal court at the trial and appellate levels.

I began my legal career as a law clerk, where I maintained a docket of federal criminal and civil appeals. I helped prepare my judge for oral argument by conducting legal research and drafting bench memoranda and legal memoranda. I also assisted in drafting opinions and orders.

Following my clerkship, I returned to Kirkland & Ellis LLP, where my practice focused on litigation. There, I represented clients in complex civil litigation in federal and state courts at trial and appellate levels. I had direct and management experience with various stages of litigation from initial pleadings to appeals. From 2010 to 2011, I was the sole associate on a trial team whose work culminated in a four-day federal bench trial (*Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10-cv-502 (E.D. Va.)), where I prepared and second-chaired numerous trial witnesses. In that case, prior to trial, I briefed dispositive motions and motions in limine, among other things. I also drafted post-trial briefing. Then again from 2011 to 2014, I was on a trial team whose work culminated in a four-week federal bench trial (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, No. MDL-2179 (E.D. La) (Phase II)), where I prepared and second-chaired an expert witness who testified at trial. In that case, I drafted significant trial and post-trial briefs. While at

Kirkland, I also served as national coordinating counsel for litigation for a global Fortune 500 company. In that role, I managed over 140 cases in 20 jurisdictions and was responsible for case strategy and management of local counsel. In addition to the above, I drafted various pleadings, motions, and appellate briefs in state and federal courts.

In 2014, I left private practice to join the United States Department of Justice, United States Attorney's Office for the Eastern District of Kentucky. As an Assistant United States Attorney, I represented the United States of America in criminal and civil cases at the trial and appellate levels. I served as a member of the Fraud Unit and my work focused on sophisticated drug crimes and health care fraud as we battled the opioid epidemic.

While serving as an AUSA, I represented the United States in two trials. The most recent was an eight-day criminal federal jury trial (*United States v. Hubbard*, et al., No. 5:15-CR-104 (E.D. Ky.)), involving 71 charges. I conducted examination of 26 witnesses. I assisted in developing this case from the initial investigation through sentencing. My first trial as an AUSA was a five-day civil federal bench trial (*Stanford v. United States*, No. 6:12-cv-93 (E.D. Ky.)), during which I conducted direct and cross-examinations of lay and expert witnesses. I also drafted pre-trial and post-trial briefing.

While serving at the United States Attorney's Office, I had the opportunity to detail to the United States Department of Justice, Office of Legal Policy. I currently serve as the Principal Deputy Attorney General at the Office of Legal Policy, where I provide legal and policy advice to the Assistant Attorney General and Department of Justice leadership. Throughout my time at the Office of Legal Policy, I have maintained a policy portfolio with principal focus on issues related to the opioid epidemic (including fentanyl), violent crime, contraband cellphones, religious liberty, and regulatory reform. I have also been involved in judicial nominations work.

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

For the majority of my legal career, I have specialized in complex litigation. In private practice, my clients tended to be Fortune 500 companies and larger corporations engaged in bet-the-company litigation. At the United States Attorney's Office, I represented the United States of America, and the vast majority of my cases (both criminal and civil) involved complex fraud. At the Office of Legal Policy, I represent the United States of America and maintain a policy portfolio.

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

Approximately 75% of my practice has been in litigation. From 2009 to 2014, I appeared in court occasionally. From 2014 to 2017, I appeared in court frequently. From September 2017 to present, I have not appeared in court, but I maintain a policy portfolio.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 90% |
| 2. state courts of record:  | 10% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 70% |
| 2. criminal proceedings: | 30% |

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

I have tried four cases to verdict or judgement in federal district court. In two cases, I served as co-lead counsel. In two cases, I served as associate counsel.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 25% |
| 2. non-jury: | 75% |

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

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

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

- a. the date of representation;

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

1. *United States v. Hubbard*, et al., No. 5:15-CR-104 (E.D. Ky.)

I represented the United States of America in this multi-year investigation and multi-defendant criminal case, which culminated in the jury trial of Lonnie Hubbard. After an eight-day trial, the jury found Mr. Hubbard, a registered pharmacist, guilty of 71 counts, including sophisticated drug crimes involving opioids and methamphetamine precursors and money laundering. With co-counsel, I prepared the case for trial. At trial, I argued the lone motion in limine and elicited the testimony of 26 witnesses. I also drafted significant pre- and post-trial briefing, including the United States's opposition to Mr. Hubbard's motion for new trial and United States's sentencing memorandum regarding Mr. Hubbard. Mr. Hubbard was sentenced to 30 years' imprisonment, and his conviction and sentence were upheld by the Sixth Circuit in toto on appeal (2019 U.S. App. LEXIS 21311 (6th Cir. 2019)). In addition to the trial of Mr. Hubbard, I assisted in prosecuting the broader case against Mr. Hubbard's co-conspirators and associated actors. In total, six additional defendants were also convicted in this case.

Dates of Representation: 2016 – 2017

Presiding Judge: Hon. Danny C. Reeves

Defendant's Counsel [Lonnie Hubbard]:

James D. Hodge  
Hodge Law Firm  
Post Office Box 1746  
London, Kentucky 40743  
(606) 864-3004

Defendant's Counsel: [Meggan Ashley Hubbard]

Jerry L. Wright  
Jerry L. Wright, PSC  
153 Market Street  
Lexington, Kentucky 40507  
(859) 333-1931

Defendant's Counsel: [Charles McKinney Jr.]

John C. Helmuth  
155 East Main Street, Suite 101  
Lexington, Kentucky 40507  
(859) 231-1560



Defendant's Counsel: [Joseph A. McKinney]  
 Joyce A. Merritt  
 Embry Merritt Shaffar Womack, PLLC  
 155 East Main Street, Lion Building, Suite 260  
 Lexington, Kentucky 40507  
 (859) 543-0453

Mark Anthony Flores  
 Littler Mendelson, P.C.  
 2001 Ross Avenue, Suite 1500, Lock Box 116  
 Dallas, Texas 75201  
 (214) 880-8100

Robert L. Abell  
 120 North Upper Street  
 Post Office Box 983  
 Lexington, Kentucky 40588  
 (859) 254-7076

Defendant's Counsel: [Darrell G. Gabbard]  
 Thomas C. Lyons  
 Thomas C. Lyons Law Offices  
 201 West Short Street, Suite 800  
 Lexington, Kentucky 40507  
 (859) 231-0055

Defendant's Counsel: [Jody Earl Gabbard]  
 Mary Ann Leichty  
 205 Peach Orchard Circle  
 Fisherville, Kentucky 40023  
 (859) 536-8405

Rachel Diane Yavelak  
 Oeltgen & D'Ambruoso, PLLC  
 120 North Mill, Suite 300  
 Lexington, Kentucky 40507  
 (859) 523-1606

Defendant's Counsel: [Lavada Jessica Jones]  
 Pam Ledgewood  
 271 West Short Street, Suite 403  
 Lexington, Kentucky 40507  
 (859) 233-7323

Defendant's Counsel: [Darryl Jones]

Benjamin P. Hicks  
300 West Short Street  
Lexington, Kentucky 40507  
(859) 420-1675

Jeffrey C. Rager  
Rager Law, PLLC  
444 Lewis Hargett Circle, Suite 180  
Lexington, Kentucky 40503  
(859) 963-2929

Co-Counsel:

Ron L. Walker, Jr.  
Lauren Tanner Bradley  
United States Attorney's Office, Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
(859) 233-2661

2. *Stanford v. United States*, No. 6:12-cv-93 (E.D. Ky.)

I represented the United States of America in this complex defensive civil case with third-party defendants and cross claims. The case involved a civilian individual who was severely injured when using a zip line at a training center designed for the military and national guard. I joined the case as co-counsel in the month before trial to prepare the case for trial and present the case at trial. I represented the United States during a five-day bench trial, where I elicited testimony from four witnesses, including direct and cross examinations of lay and expert witnesses. I also drafted significant pre-trial briefing, including a motion in limine, deposition designations and objections, and proposed exhibits and objections. Following trial, the case was settled.

Dates of Representation: 2015 – 2016

Presiding Judge: Hon. Amul R. Thapar

Plaintiff's Counsel: [Matthew Stanford]

Douglas H. Morris  
Lea A. Player  
Robyn Bell Stanton  
Morris & Player PLLC  
1211 Herr Lane, Suite 205  
Louisville, Kentucky 40222  
(502) 426-3430

Christopher P. Evensen  
Joshua Erik Abell

Evensen Law Office  
6011 Brownsboro Park Boulevard, Suite A  
Louisville, Kentucky 40207  
(502) 719-3145

William J. Driscoll  
Driscoll & Associates, P.S.C.  
6011 Brownsboro Park Boulevard, Suite A  
Louisville, Kentucky 40207  
(502) 587-1983

Cross-Defendant's and Third-Party Defendant's Counsel: [Commonwealth of Kentucky, Department of Military Affairs]  
Benjamin Adam Long  
Office of the Kentucky Attorney General  
700 Capital Avenue, Capitol Building, Suite 118  
Frankfort, Kentucky 40601  
(502) 696-5300

Cross-Defendant's and Third-Party Defendant's Counsel: [United States Army Cadet Corps, Inc. & Joseph H. Gorman & Joseph M. Land, Sr. (third party defendant only), William R. Nordan]  
Erwin Roberts  
Frost Brown Todd LLC  
400 West Market Street, Suite 3200  
Louisville, Kentucky 40202  
(502) 882-4972

Intervenor-Plaintiff's & Cross-Claimant's Counsel: [Kentucky Association of Counties Workers' Compensation Fund]  
Cristina Francesca Keith  
301 East Main Street, Suite 1000  
Lexington, Kentucky 40507  
(323) 842-3086

Scott M.B. Brown  
Timothy J. Walker  
Tighe Alexander Estes  
Fogle, Keller, Purdy, PLLC  
300 East Main Street, Suite 400  
Lexington, Kentucky 40507  
(859) 253-4700

Third-Party Defendant's Counsel: [Bluegrass Area Development District, Inc. and David Lee Parker]  
Shelby C. Kinkead, Jr.

John G. Irvin, Jr.  
Robert Coleman Stilz, III  
Kinhead & Stilz, PLLC  
301 East Main Street, Suite 800  
Lexington, Kentucky 40507  
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Co-Counsel:  
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United States Attorney's Office, Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
(859) 233-2661

Anna R. Gwinn  
1124 Sheffield Place  
Lexington, Kentucky 40509  
(859) 263-7303

3. *United States v. Kennedy*, No. 13-6011, 595 F. App'x 584 (6th Cir. 2015)

I represented the United States of America in this criminal appeal. Following his conviction, James Raymond Kennedy challenged his sentence related to the preparation and filing of false and fraudulent tax returns and asserted that he received ineffective assistance of counsel at trial. I briefed the United States's opposition to Mr. Kennedy's appeal, and I argued the appeal on behalf of the United States in the Sixth Circuit. The Sixth Circuit issued an opinion affirming Mr. Kennedy's sentence and declined to review Mr. Kennedy's ineffective-assistance-of-counsel claim.

Dates of Representation: 2014 – 2015

Presiding Judges: Hon. Martha Craig Daughtrey, Hon. Karen Nelson Moore, and Hon. Eric L. Clay

Defendant-Appellant's Counsel:  
Melissa M. Salinas  
Anjali Biala  
Office of the Federal Public Defender  
617 Adams Street, Second Floor  
Toledo, Ohio 43604  
(419) 259-7370

Dennis G. Terez, Federal Public Defender  
Federal Public Defender's Office  
1660 West Second Street, Suite 750  
Cleveland, Ohio 44113

(216) 522-4856

Co-Counsel:

Charles P. Wisdom Jr.  
United States Attorney's Office, Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
(859) 233-2661

4. *United States v. Ezekiel Akande*, No. 6:17-CR-13 (E.D. Ky.)

I represented the United States of America in this criminal case. Ezekiel Akande was a registered physician and owner of a pain clinic. The grand jury indicted Mr. Akande on eight counts, including counts for illegally distributing opioids, healthcare fraud, and money laundering. I prosecuted the case on behalf of the United States, with co-counsel, including drafting the indictment, handling discovery, and preparing the case for an anticipated trial. I left the United States Attorney's Office before the case concluded, but I understand that a plea deal was negotiated, and Mr. Akande pled guilty to one count in the indictment.

Dates of Representation: 2017

Presiding Judge: Hon. Gregory VanTatenhove

Defendant's Counsel

Kent Wicker  
Dressman Benzinger LaVelle PSC  
321 West Main Street, 2100 Waterfront Plaza  
Louisville, Kentucky 40202  
(502) 572-2503

Marc S. Murphy  
Stites & Harbison, PLLC  
400 West Market Street Suite 1800  
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(502) 587-3400

Co-Counsel:

Roger West  
United States Attorney's Office, Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
(859) 233-4895

5. *United States v. Appalachian Regional Healthcare, Inc.*, No. 5:16-cv-132, 246 F. Supp. 3d 1184 (E.D. Ky. 2017)

I represented the United States of America in this affirmative civil enforcement action alleging violations of the Controlled Substances Act related to Appalachian Regional Healthcare (ARH) permitting a physician working at one of its facilities to write, and its pharmacies to fill, prescriptions for a controlled substance for employees without a legitimate medical purpose. I investigated the case and engaged in pre-filing negotiations. I also drafted and filed the complaint, directed discovery, took depositions, and drafted the United States's successful opposition to defendant's motion to dismiss. The matter was ultimately settled with ARH making a monetary payment to the United States and agreeing to train its physicians and staff on the proper prescribing and filling of controlled substances.

Dates of Representation: 2016 – 2017

Presiding Judge: Hon. Joseph M. Hood

Defendant's Counsel:

Brittany Hampton Buzick  
Carole D. Christian  
Christopher A. Melton  
Wyatt, Tarrant & Combs, LLP  
500 West Jefferson Street, PNC Plaza, Suite 2800  
Louisville, Kentucky 40202  
(502) 589-5235

Co-Counsel:

Daniel E. Hancock  
Fultz Maddox Dickens, PLC  
101 South Fifth Street, 27th Floor  
Louisville, Kentucky 40202  
(502) 588-2000

6. *United States ex rel. Levine et al v. Avnet, Inc.*, No. 2:14-cv-17, 2015 WL 1499519 (E.D. Ky. 2015)

I represented the United States of America in this False Claims Act case involving then-novel legal questions related to the United States's decision to move to dismiss a *qui tam* action. I served as the lead AUSA on the case, working with law enforcement to investigate the allegations in the *qui tam* action. Following that investigation, I briefed, filed, and argued the United States's motion to dismiss the case. The court granted the United States's motion to dismiss. A party in the case subsequently filed an appeal to the Sixth Circuit. I represented the United States of America in the Sixth Circuit, and the appeal was dismissed for want of prosecution (*Evan Levine, et al. v. Avnet, Inc. et al.* (6th Cir. 15-5498)).

Dates of Representation: 2014 – 2015

Presiding Judge: Hon. William O. Bertelsman

Plaintiffs-Relators' Counsel:

Anne Hayes Hartman  
Wayne T. Lamprey  
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4 Embarcadero Center, 14th Floor  
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James B. Helmer, Jr.  
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(513) 421-2400

Kirk B. Hulett  
Hulett Harper Stewart LLP  
225 Broadway, Suite 1350  
San Diego, California 92101  
(619) 338-1133

Defendant's Counsel: [Avnet, Inc.]

Craig D. Margolis  
Vison & Elkins, LLP  
2200 Pennsylvania Avenue, Northwest, Suite 500 West  
Washington, D.C. 20037  
(202) 639-6540

Defendant's Counsel: [Xilinx, Inc.]

Benedict Y. Hur  
Keker Van Nest & Peters  
633 Battery Street  
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Defendant's Counsel: [Aeroflex, Inc.]

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1001 Pennsylvania Avenue, Northwest  
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Co-Counsel:

Paul McCaffrey

United States Attorney's Office, Eastern District of Kentucky  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507  
(859) 233-2661

7. *United States v. Averill*, No. 15-5068, 636 F. App'x 312 (6th Cir. 2016), *United States v. Earls*, No. 15-5081, 636 F. App'x 312 (6th Cir. 2016), *United States v. Mills*, No. 15-5087, 636 F. App'x 312 (6th Cir. 2016)

I represented the United States of America in the above three criminal appeals, which were consolidated before the Sixth Circuit. Ronald Averill, Jennifer Earls, and Clarence Mills filed appeals following their respective guilty pleas for conspiring to distribute opioids. Mr. Averill, Ms. Earls, and Mr. Mills each challenged the amount of opioids attributed to him or her at sentencing based on the evidence elicited at trial. In addition, Mr. Averill challenged the substantive reasonableness of his sentence. I briefed all three cases on appeal. The Sixth Circuit issued an opinion affirming the district court's judgment in all three cases in all respects.

Dates of Representation: 2015 – 2016

Presiding Judges: Hon. Danny J. Boggs, Hon. Julia Smith Gibbons, and Hon. Richard Allen Griffin

Defendant-Appellant's Counsel [Averill]:

Kevin Michael Schad  
Federal Public Defender's Office  
250 East Fifth Street, Suite 350  
Cincinnati, Ohio 45202  
(513) 929-4834

Defendant-Appellant's Counsel [Earls]:

Matthew McLain  
Law Offices  
201 North New York Avenue, Suite 200  
Winter Park, Florida 32789  
(407) 388-1900

Defendant-Appellant's Counsel [Mills]:

Paul L. Nelson  
Federal Public Defender's Office  
Western District of Michigan  
50 Louis Street, Northwest, Suite 300  
Grand Rapids, Michigan 49503

8. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. MDL-2179 (E.D. La) (Phase II)



I represented BP in Phase II of the Deepwater Horizon multi-district litigation, which culminated in a four-week federal bench trial. Prior to trial, I engaged in all stages of litigation, including, without limitation, significant discovery, lay and expert witness depositions, and pre-trial briefing. I also represented BP at the four-week trial, where I prepared and second-chaired an expert witness who testified at trial. I also assisted with the preparation of various other trial witnesses. After trial, I drafted significant post-trial briefing including proposed findings of fact and conclusions of law. The Phase II trial involved the assessment of BP's efforts to control the Deepwater Horizon well and the quantification of oil from the well. Following the trial and post-trial briefing, the court concluded that BP was not grossly negligent in its source control planning and preparation and made a finding on quantification.

Dates of Representation: 2011 – 2014

Presiding Judge: Hon. Carl J. Barbier

Plaintiff's Counsel:

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A. Nathaniel Chakeres  
Anna Cross  
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 Stuart A.C. Drake  
 Karen McCartan DeSantis  
 Kirkland & Ellis LLP  
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Ebony Sunala Johnson  
Consumer Financial Protection Bureau  
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Transocean Deepwater Inc.'s Counsel:

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Brad D. Brian  
Luis Li  
Grant A. David-Denny  
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335 South Grand Avenue, 35th Floor

Los Angeles, California 90071

Halliburton Energy Services Inc.'s Counsel:

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Jenny L. Martinez  
Bruce W. Bowman, Jr.  
Prescott W. Smith  
Sean W. Fleming  
Godwin Lewis  
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(504) 592-0691

Warren A. Fitch  
Ky E. Kirby  
Bingham McCutchen  
2020 K Street, Northwest  
Washington, D.C. 20006  
(202) 778-6150

9. *Pease et al. v. Abbott Laboratories, Inc.*, 12-cv-1844, 2013 WL 174478 (D. Md. 2013)

I represented Abbott Laboratories, Inc., in this case involving allegations of strict liability and negligence for the manufacture, design, and marketing of a prescription drug. I briefed a motion to dismiss plaintiffs' claims involving strict liability for manufacturing the drug and issues involving Maryland's Consumer Protection Act. The court granted the motion to dismiss, issuing a ground-breaking opinion. I also drafted Abbott Laboratories, Inc.'s answer and engaged in subsequent investigation of the plaintiffs' allegations and discovery. I left the firm before the case was concluded, but I understand that the case was settled.

Dates of Representation: 2012 – 2013

Presiding Judge: James K. Bredar

Plaintiff's Counsel:

Barry J. Nace  
Jonathan Barry Nace  
Paulson and Nace  
1615 New Hampshire Avenue, Northwest  
Washington, D.C. 20009  
(202) 463-1999

Co-Counsel:

Jennifer Sands Atkins  
Antonin Scalia Law School  
George Mason University  
3301 Fairfax Drive  
Arlington, Virginia 22201  
(703) 993-9158

10. *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10-cv-502 (E.D. Va.)

I represented Vienna Metro LLC in this sophisticated breach of contract dispute that culminated in a four-day bench trial. Prior to trial, I worked on all stages of litigation, including, without limitation, significant discovery, lay and expert witness depositions, dispositive motions, and motions in limine. At trial, I prepared and second-chaired numerous trial witnesses. I also first-chaired two witnesses who did not ultimately testify at trial. After trial, I drafted post-trial briefing, including a successful fee petition. The court ultimately concluded that the defendant breached the parties' contract and ordered specific performance of the contract.

Dates of Representation: 2010 – 2011

Presiding Judge: Hon. Gerald Bruce Lee

Defendant's Counsel:

Cathy Ann Hinger  
Paul Arthur Kaplan  
Elizabeth Warner Whip Grau  
Jason Cameron Hicks  
Womble Carlyle Sandridge & Rice PLLC  
1200 19th Street, Northwest, Suite 500  
Washington, D.C. 20036  
(202) 857-4489

Intervenor's Counsel:

Joshua Seth Devore  
Benjamin D. Brown  
Jeffrey B. Dubner  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Ave., Northwest, Suite 500, West Tower  
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Co-Counsel:

Thomas Arthur Clare  
Elizabeth M. Locke  
Clare Locke LLP  
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The Honorable Kate O'Scannlain  
United States Department of Labor  
200 Constitution Avenue, Northwest  
Washington, D.C. 20210  
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Rebecca Ann Koch  
United States Attorney's Office, District of Maryland  
36 South Charles Street, 4th Floor  
Baltimore, Maryland 21201  
(410) 209-4800

Julie Posteraro  
United States Attorney's Office, Middle District of Florida  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
(407) 648-7590

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.)

Prior to September 2017, my legal practice consisted almost entirely of litigation and strategic counseling in anticipation of litigation. From September 2017 to the present, I have served at the United States Department of Justice in the Office of Legal Policy. In that role, I have maintained a policy portfolio with principal focus on issues related to the

opioid epidemic (including fentanyl), violent crime, contraband cellphones, religious liberty, and regulatory reform. I have also been involved in judicial nominations work.

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

I have not taught any courses.

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

I continue to participate in a 401K plan associated with my former employer, Kirkland & Ellis LLP. The plan sponsor ended contributions once my employment ended with the firm in 2014.

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

I have no plans, commitments, or agreements to pursue outside employment during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain



how you would address any such conflict if it were to arise.

If confirmed, I will recuse in any case where Joseph R. Oliveri, my husband and a practicing attorney, participated at any stage of the proceedings. I am unaware of any financial arrangements or categories of litigation that are likely to present potential conflicts-of-interest if I am confirmed. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of a conflict, on a case by case basis and determine appropriate action, including recusal where necessary.

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

If confirmed, I would evaluate any potential conflicts of interest under the standards set forth in 28 U.S.C. § 455 and Canon 3C of the Code of Conduct for United States Judges, both of which address the question whether federal judges must disqualify themselves due to conflicts. In considering those rules, I would further consult any judicial decisions or Judicial Conference opinions applying the rules to particular cases or circumstances.

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

Even before I began the practice of law, I endeavored to devote time to participate in serving the disadvantaged and my community. This commitment has continued throughout my legal career. In private practice, I regularly maintained an active pro bono practice. That practice included, among other things, representation of a disabled military veteran seeking Veterans Administration compensation related to his service-connected disabilities, legal services for Catholic Charities, and assistance to the Washington Middle School for Girls (now the expanded Washington School for Girls), an independent Catholic Middle School in Washington, D.C., focused on providing support and education for young girls who are living in underserved areas and are at risk of leaving school prematurely. In 2011, 2012, and 2013, I earned the Kirkland & Ellis LLP Pro Bono Service Award for my work. I have also been recognized on the Capital Pro Bono Honor Roll for my commitment to pro bono service.

Once I entered the United States Department of Justice in 2014, I continued pro bono service as permitted in my government role. As an Assistant United States Attorney, I developed and managed an office-wide reading and outreach program at a local underserved elementary school. I also served as a member of the United States Attorney's Office's community outreach team. In this capacity, I participated in events designed to educate United States servicemembers and veterans about their rights and the protections available to them under federal law. More recently, I have dedicated a

portion of my portfolio to access to justice issues including, among other things, elder justice.

26. **Selection Process:**

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

On July 8, 2019, I sent a resume and letter to staff in Senator Blackburn's office to be considered for a vacancy on the United States District Court for the Eastern District of Tennessee. On August 1, 2019, I met with Senator Blackburn to discuss my interest. On September 24, 2019, I interviewed with attorneys from the Office of White House Counsel and the Department of Justice's Office of Legal Policy. On September 16, 2020, President Trump announced his intent to nominate me to serve as a Judge on the United States District Court for the Eastern District of Tennessee. Since then, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10  
Rev. 1/2019

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Crytzer, Katherine A.	<b>2. Court or Organization</b> U.S. District Court, Eastern District of Tennessee	<b>3. Date of Report</b> 09/22/2020
<b>4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> Nominee	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination      Date 09/22/2020 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final <b>5b.</b> <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2019 to 09/22/2020
<b>7. Chambers or Office Address</b> United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530		
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Employee	United States Department of Justice
2. Board Member	Middle Tennessee State University Honors College Board of Visitors
3. Board Member	George Mason University, Antonin Scalia Law School Alumni Association Board
4.	
5.	

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

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2014	I will continue to participate in the Kirkland & Ellis LLP 401k plan. The plan sponsor ended contributions once my employment with them ended in 2014.
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
 Page 3 of 6

Name of Person Reporting	Date of Report
Crytzer, Katherine A.	09/22/2020

**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1. Exempt			
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

Name of Person Reporting	Date of Report
Crytzer, Katherine A.	09/22/2020

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

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	408	890	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		340	343	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		443	525
Real estate owned – see schedule		685	316	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		17	275				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		149	858				
				Total Liabilities		443	525
				Net Worth	2	158	157
Total Assets	2	601	682	Total Liabilities and Net Worth	2	601	682
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Vanguard Target Retirement 2050 Trust Fund #1	\$ 57,984.00
Vanguard Target Retirement 2050 Trust Fund #2	159,463.13
Merrill IRA-Edge 43X-19G47	10,038.40
JPMorgan Smart Retirement 2045 A (Cash Equivalent)	112,858.73
Total Listed Securities	<u>\$340,342.78</u>

Real Estate Owned

Personal Residence	<u>\$685,316</u>
Total Real Estate Owned	<u>\$685,316</u>

Real Estate Mortgages Payable

Personal Residence – Mortgage	<u>\$443,524.84</u>
Total Real Estate Mortgages Payable	<u>\$443,524.84</u>

AFFIDAVIT

I, Katherine A. Cytzer, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

9/21/20  
(DATE)

Kate Cytzer  
(NAME)



Michelle Ladd 9/21/20  
(NOTARY)



**Nomination of Katherine Crytzer to the United States District Court for the  
Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1) Earlier this year, President Trump nominated you to be the Inspector General (IG) of the Tennessee Valley Authority (TVA). During your confirmation process, Senator Carper — the ranking member of the Environment and Public Works Committee — criticized you for failing to show any independence from the Trump White House. Senator Carper stated that you “would not state that it is wrong for a President to tweet accusations of bias or incompetence at Inspectors General who dare to criticize the administration.” (Sen. Carper remarks at markup of Senate EPW Committee, July 2020) In an interview for your college alumni magazine, you talked about how honored you were to be “in the room with President Trump” at one point. (*Class Notes*, Middle Tennessee State University Magazine, Winter 2020, Vol. 24, No. 2)

**Will you commit to recusing yourself from any matter that comes before you involving President Trump or his family?**

If I am fortunate enough to be confirmed, I commit to evaluating any potential conflicts of interest, or relationship that could give rise to appearance of a conflict, on a case by case basis, applying the standards set forth in 28 U.S.C. § 455 and Canon 3C of the Code of Conduct for United States Judges. In considering those rules, I would further consult any judicial decisions or Judicial Conference opinions applying the rules to particular cases or circumstances, as appropriate.

- 2) A profile of you in your college alumni magazine stated that you had an “influential role” in selecting the Trump Administration’s judicial nominees. (*Class Notes*, Middle Tennessee State University Magazine, Winter 2020, Vol. 24, No. 2)

**Did you ever advise or suggest in any way that a judicial nominee should not answer questions about whether *Brown v. Board of Education* was correctly decided?**

My primary role at the Office of Legal Policy was not to prepare nominees for Senate Judiciary Committee hearings, however each judicial nominee decides for herself or himself how to answer any question presented.

- 3) Public records indicate that you played a role in the Justice Department’s Religious Liberty Task Force, which was created by former Attorney General Jeff Sessions in 2018.

**What did your work on this task force entail?**

Throughout my time at the Office of Legal Policy, I have maintained a policy portfolio, which includes issues related to religious liberty. In July 2018, the Attorney General announced the

creation of the Department of Justice's Religious Liberty Task Force and designated the Assistant Attorney General for the Office of Legal Policy to serve as the Vice Chair for Policy. In this context, I have provided legal and policy advice to the Assistant Attorney General and Department of Justice leadership related to religious liberty.

4) Please respond with your views on the proper application of precedent by judges.

**a) When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

It is not appropriate for a lower court to depart from applicable Supreme Court precedent.

**b) Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

A federal district court judge must fully and faithfully follow applicable Supreme Court precedent. A district court judge would be in a position to author a concurrence or dissent if the judge is sitting by designation on a court of appeals or on a specially constituted three-judge panel of the district. It can be appropriate for a district court judge to observe potential challenges, conflicts, or inconsistencies in Supreme Court jurisprudence while applying Supreme Court precedent, but the district court judge must fully and faithfully apply Supreme Court precedent.

**c) When, in your view, is it appropriate for a district court to overturn its own precedent?**

As the Supreme Court has stated, “[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (citation omitted). Federal Rules of Civil Procedure 59(e) and 60 provide the standards under which a district court judge may reconsider a prior ruling in a civil proceeding. The Federal Rules of Criminal Procedure also provide standards under which a district court judge may amend, vacate, or correct a sentence or judgment in a criminal proceeding.

**d) When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

The question of when it is appropriate for the Supreme Court to overturn its own precedent is a question of *stare decisis* solely within the purview of the Supreme Court. In *Ramos v. Louisiana*, the Supreme Court recently identified various factors it considers “[w]hen it revisits a precedent”: “this Court has traditionally considered ‘the quality of the decision’s reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision.’” 140 S. Ct. 1390, 1405 (2020) (citation omitted).

- 5) When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016)).

**a) Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?**

*Roe v. Wade*, 410 U.S. 113 (1973) is Supreme Court precedent. If confirmed, I will fully and faithfully apply all applicable Supreme Court precedent.

**b) Is it settled law?**

District court judges are bound by all applicable Supreme Court precedent, including *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). If confirmed, I will fully and faithfully apply *Roe* and *Casey*.

- 6) In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

District court judges are bound by all applicable Supreme Court precedent, including *Obergefell v. Hodges*, 576 U.S. 644 (2015). If confirmed, I will fully and faithfully apply *Obergefell*.

- 7) In Justice Stevens’s dissent in *Distrcit of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

**a) Do you agree with Justice Stevens? Why or why not?**

As a judicial nominee, it would be inappropriate for me to opine on the correctness or legal reasoning of an opinion, concurrence, or dissent authored by a Justice of the Supreme Court. See Code of Conduct for United States Judges, Canons 2A, 3A(6). If I am fortunate

enough to be confirmed as a district court judge, I would be bound by the majority opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

**b) Did Heller leave room for common-sense gun regulation?**

In *Heller*, the majority opinion stated that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

**c) Did Heller, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

In *Heller*, the majority “conclude[d] that noting in our precedents forecloses our adoption of the original understanding of the Second Amendment.” *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008). The Justices disagreed on the scope and applicability of the Supreme Court’s prior Second Amendment jurisprudence.

- 8) In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations’ independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a) Do you believe that corporations have First Amendment rights that are equal to individuals’ First Amendment rights?**

In *Citizens United v. FEC*, the Supreme Court concluded that “First Amendment protection extends to corporations.” 558 U.S. 310, 342 (2010). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply *Citizens United*.

**b) Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Justice Stevens raised this argument in his opinion concurring in part and dissenting in part in *Citizens United*. As a judicial nominee, it would be inappropriate for me to opine on the correctness or legal reasoning of an opinion authored by a Justice of the Supreme Court. See Code of Conduct for United States Judges, Canons 2A, 3A(6). If I am fortunate enough to be confirmed as a district court judge, I would be bound by the majority opinion in *Citizens United*.

**c) Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court held that the Religious Freedom Restoration Act of 1993 applies to a closely held corporation. 573 U.S. 682, 707-08 (2014). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply *Hobby Lobby*. As a judicial nominee, it would be inappropriate to opine further on an issue that is currently the subject of pending or impending litigation. See Code of Conduct for United States Judges, Canons 2A, 3A(6).

- 9) Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

Section 1 of the Fourteenth Amendment provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The First Amendment states, in relevant part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Supreme Court is currently considering a case that presents issues related to the interaction of these two fundamental provisions of the Constitution. See *Fulton v. City of Philadelphia*, 140 S. Ct. 1104 (2020). As such, it would be inappropriate to opine further. See Code of Conduct for United States Judges, Canons 2A, 3A(6).

- 10) Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk’s sincerely held religious beliefs?

In *Loving v. Virginia*, the Supreme Court concluded that “[t]here can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.” 388 U.S. 1, 12 (1967). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply the Court’s opinion in *Loving*. As noted in my response to Question 9, the Supreme Court is currently considering a case that presents issues related to the interaction of the Equal Protection Clause and First Amendment religious protections; as such, it would be inappropriate to opine further. See Code of Conduct for United States Judges, Canons 2A, 3A(6).

- 11) Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist’s sincerely held religious beliefs?

Please see my response to Question 10.

- 12) You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2008. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and

uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

- a) Could you please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools?**

I did not draft the quoted language and have not discussed it with any representative of the Federalist Society for Law and Public Policy Studies (Federalist Society). Therefore I cannot elaborate on what the Federalist Society meant in the quoted language.

- b) How exactly does the Federalist Society seek to “reorder priorities within the legal system”?**

Please see my response to Question 12(a).

- c) What “traditional values” does the Federalist Society seek to place a premium on?**

Please see my response to Question 12(a).

- d) Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.**

I have had conversations about my nomination with friends, family, and colleagues. I understand that some of those individuals are members of the Federalist Society, but to my knowledge, I have not discussed my nomination with anyone employed by the Federalist Society.

- e) Was it at any time communicated to you that membership in the Federalist Society would make your judicial nomination more likely? If so, who communicated it to you and in what context?**

No.

- 13) In January 2020, the Committee on Codes of Conduct of the U.S. Judicial Conference circulated a draft ethics opinion which stated that “membership in the ACS or the Federalist Society is inconsistent with obligations imposed by the Code [of Judicial

Conduct].” (Draft Ethics Opinion No. 117: Judges’ Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association (Jan. 2020))

**a) If confirmed to the District Court, will you relinquish your membership in the Federalist Society?**

If confirmed, I will consider whether and if so, how Canon 4 of the Code of Conduct for United States Judges and other applicable ethical guidelines affect my membership and affiliation with groups to which I belong, including the Federalist Society. I also anticipate conferring with other judges regarding this issue. I understand, however, that the above-referenced *Draft Ethics Opinion No. 117: Judges’ Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association* has been withdrawn.

**b) If not, how do you reconcile membership in the Federalist Society with Canon 4 of the Code of Judicial Conduct?**

Please see my response to Question 13(a) above.

- 14) On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration’s interview process for judicial nominees. He said: “On the judicial piece ... one of the things we interview on is their views on administrative law. And what you’re seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years...”

**a) Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

During the nomination selection process, I do not recall specifically being asked any questions regarding administrative law.

**b) Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

No, not in connection with the nomination selection process or my nomination.

**c) What are your “views on administrative law”?**

If I am fortunate enough to be confirmed, my view on administrative law would be to fully

and faithfully apply applicable precedent of the Supreme Court and Sixth Circuit related to administrative law.

- 15) Do you believe that human activity is contributing to or causing climate change?

I am generally aware of scientific literature that associates changes in the environment with certain human activity. The Supreme Court has recently described “climate change” as a “controversial,” “sensitive political topic[.]” *Janus v. Am. Fed’n of State, Cnty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2476 (2018). As such, it would be inappropriate to opine further. See Code of Conduct for United States Judges, Canons 2A, 5(C).

- 16) When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has held that “the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If confirmed, I will follow Supreme Court and Sixth Circuit precedent on the use of legislative history.

- 17) At any point during the process that led to your nominations — either to serve as a United States District Court Judge for the Eastern District of Tennessee or to be Inspector General of the Tennessee Valley Authority — did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

- 18) Please describe with particularity the process by which you answered these questions.

I received these questions from the Office of Legal Policy. I read them and drafted responses. I received comments on my draft responses from attorneys at the Office of Legal Policy. The answers contained in this document are my own.



**Senator Dick Durbin**  
**Written Questions for Crytzer**  
**November 25, 2020**

For questions with subparts, please answer each subpart separately.

Questions for Katherine Crytzer

1. You currently work in the Justice Department's Office of Legal Policy. You say in your questionnaire that you "provide legal and policy advice to the Assistant Attorney General and Department of Justice leadership" and you say the issues you have worked on include "the opioid epidemic, violent crime, contraband cellphones, religious liberty, and regulatory reform" as well as "judicial nominations work." Your work on these policy and legal matters may raise questions of recusal should you be confirmed as a judge and should cases involving these matters come before you.

- a. **Without disclosing the contents of any legal advice you provided, please list and describe the specific matters and policy issues you have worked on at the Office of Legal Policy.**

Throughout my time at the Office of Legal Policy, I have maintained a policy portfolio with principal focus on issues related to the opioid epidemic (including Fentanyl), violent crime, contraband cellphones, religious liberty, and regulatory reform. I have also been involved in judicial nominations work.

- b. **Please explain the specific nature of the "judicial nominations work" that you have performed at the Office of Legal Policy and please identify specific nominations you worked on.**

The Office of Legal Policy (OLP) has a team of staff whose job duties primarily entail assisting the Attorney General with responsibilities in recommending candidates for federal judgeships and coordinating the judicial nomination and confirmation process with the White House and Senate. I have not been a member of that nominations team. During my time as both Principal Deputy Assistant Attorney General and Chief of Staff for OLP, my job duties included managing the various workstreams and operations of staff in the office. As such, as a general matter, my substantive involvement in judicial nominations work has been limited, with the exception of my work on the confirmation of Justices Brett M. Kavanaugh and Amy Coney Barrett.

I served on a team of attorneys at the Department of Justice that facilitated the Senate's consideration of then-Judge Brett M. Kavanaugh and then-Judge Amy Coney Barrett to serve on the Supreme Court.

- c. **Will you commit that if you are confirmed, you will recuse yourself from cases involving matters that you personally worked on while at the Department of Justice?**

If I am fortunate enough to be confirmed, I commit to recusing where I have “served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.” *See* 28 U.S.C. § 455(b)(3). I would evaluate any potential conflicts of interest, or relationship that could give rise to appearance of a conflict, on a case by case basis, applying the standards set forth in 28 U.S.C. § 455 and Canon 3C of the Code of Conduct for United States Judges. In considering those rules, I would further consult any judicial decisions or Judicial Conference opinions applying the rules to particular cases or circumstances, as appropriate.

**Nomination of Katherine A. Crytzer  
to the United States District Court for the Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

Yes, I have reviewed the Washington Post story and associated recordings in connection with responding to this question.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

The Code of Conduct for United States Judges prohibits me, as a judicial nominee, from commenting on matters of political and policy debate related to judicial nominations. *See* Code of Conduct for United States Judges, Canons 2A, 5(C).

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Please see my response to Question 1(b).

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting

moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

Please see my response to Question 1(b).

2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
  - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

I agree with Justice Roberts’ metaphor to the extent that it conveys that the proper role of the judiciary is to render a legal decision based on the facts and the law within the confines of a particular case or controversy before the court.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Generally, the practical consequences of a particular ruling play a part in a judge’s rendering of a decision when the applicable legal standard or precedent call on the judge to consider such practical consequences. One example of such a circumstance is criminal sentencing, where a judge must consider certain factors under 18 U.S.C. § 3553(a).

3. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a trial judge to make a subjective determination?

No; in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), among other cases, the Supreme Court has laid out a framework for lower courts to apply when considering a motion for summary judgment under Federal Rule of Civil Procedure 56.

4. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

A federal judge is duty-bound to “administer justice without respect to persons, and do equal right to the poor and to the rich.” 28 U.S.C. § 453. Within this context, however, a judge can understand and appreciate the experiences, circumstances, and perspectives of the individuals who come before the court.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

A judge's personal life experience can be valuable in building and demonstrating the judgment, respect, and integrity required to be an effective member of the judiciary.

5. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

It is not appropriate for a district court judge to ignore, disregard, refuse to implement, or issue an order that is contrary to a lawful order from a superior court.

6. The Seventh Amendment ensures the right to a jury "in suits at common law."  
a. What role does the jury play in our constitutional system?

The jury plays a critical role as a finder of fact in our judicial system in civil and criminal cases under both the Seventh Amendment and the Sixth Amendment, as appropriate.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

The Supreme Court has issued key opinions on the Federal Arbitration Act, and I would fully and faithfully apply such Supreme Court precedent. Issues related to the enforceability of mandatory pre-dispute arbitration clauses are the subject of pending or impending litigation. As such, it would be inappropriate to opine further. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6).

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 6(b).

7. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The Supreme Court has stated that courts "must review legislative 'factfinding under a deferential standard,'" while "the Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake." *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2310 (2016) (citations and emphasis omitted).

8. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes, I have reviewed Advisory Opinion #116 in connection with responding to this question.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

- i. Determining whether the seminar or conference specifically targets judges or judicial employees.

The independence and integrity of the judiciary are central to the rule of law and our constitutional separation of powers. Federal law governing recusal of judges, the Code of Conduct for United States Judges, and Advisory Opinion #116 protect the independence and integrity of the judiciary. If confirmed, I commit to evaluating any potential conflict of interest on a case by case basis applying the relevant standards, including when considering participation in educational seminars.

- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

Please see my response to Question 8(b)(i).

- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

Please see my response to Question 8(b)(i).

- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

Please see my response to Question 8(b)(i).

- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Please see my response to Question 8(b)(i).

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to Question 8(b)(i).

9. Earlier this year, the Federal Judiciary's Committee on the Codes of Conduct drafted a proposed advisory opinion concluding that a judge's ongoing "membership in. . . the Federalist Society is inconsistent with obligations imposed by the Code [of Conduct.]" After an aggressive lobbying campaign by Federalist Society-affiliated judges, the Committee ultimately voted to table the proposed opinion. In doing so, the Committee observed: "The nation depends on a judiciary that is impartial and independent. Consistent with the judge's oath, each individual judge should take care to make all membership decisions in a way that is consistent with the highest ideals of the profession as expressed in the Code of Conduct." (emphasis added.)

- a. If confirmed, do you plan to continue your membership in the Federalist Society?

If confirmed, I will consider whether and if so, how Canon 4 of the Code of Conduct for United States Judges and other applicable ethical guidelines affect my membership and affiliation with groups to which I belong, including the Federalist Society for Law and Public Policy Studies (Federalist Society). I also anticipate conferring with other judges regarding this issue.

- b. In the draft of Advisory Opinion #117, the Committee concluded that official affiliation with ACS or the Federalist Society "could convey to a reasonable person that the affiliated judge endorses the views and particular ideological perspectives advocated by the organization; call into question the affiliated judge's impartiality on subjects as to which the organization has taken a position; and generally frustrates the public's trust in the integrity and independence of the judiciary."

- i. Do you think the Federalist Society is an organization "that serves the interests generally of those who use the legal system, rather than the interest of any specific constituency"? Why or why not?

Please see my response to Question 9(a).

- ii. Do you think the Federalist Society "is generally viewed by the public as having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations"? Why or why not?

Please see my response to Question 9(a).

- iii. Do you believe that a judge's membership in the Federalist Society may reasonably be seen by the public as engendering indirect advocacy of the organization's political, social, or civic objectives? Why or why not?

Please see my response to Question 9(a).

- iv. Do you believe that reasonable members of the public would perceive a judge who has membership in the Federalist Society, a self-described group of conservatives and libertarians, to be partial or impartial? Why?

Please see my response to Question 9(a).

- v. The draft opinion notes “the Federalist Society’s funding comes substantially from sources that support conservative political causes.” Do you believe that membership in an organization tied to such funding could give rise to the appearance of impropriety or partiality? Why or why not?

Please see my response to Question 9(a).

10. Please describe with specificity your role in Justice Kavanaugh’s confirmation process.

I served on a team of attorneys at the Department of Justice that facilitated the Senate’s consideration of then-Judge Brett M. Kavanaugh to serve on the Supreme Court.

11. Did you have any contact with the FBI in connection with your work on Justice Kavanaugh’s confirmation? Please specify.

Not to my recollection.

12. Did you have any contact with the FBI in connection with the supplemental background investigation conducted into Dr. Blasey Ford’s allegations?

Not to my recollection.

13. Who else at OLP had contact with the FBI regarding the Kavanaugh confirmation?

To the best of my knowledge, a subset of the Office of Legal Policy nominations team would have performed their normal functions with respect to any FBI contacts.

14. The FBI represented that the White House directed and set the scope of its supplemental background investigation into Dr. Blasey Ford’s allegations. Who at the White House directed the FBI (including any intermediaries involved)?

It was publicly reported that on October 5, 2018, the then-Chairman of the Senate Judiciary Committee stated that the FBI opened a supplemental background investigation on then-Judge Brett M. Kavanaugh at the Senate Judiciary Committee’s request. *See* Supplemental FBI Investigation Executive Summary, <https://www.grassley.senate.gov/news/news-releases/supplemental-fbi-investigation-executive-summary>. “The request was for an investigation into [then] current allegations against Judge Kavanaugh.” *Id.*

15. Multiple individuals—including some with firsthand knowledge relevant to the investigation— reported that they sent tips to the FBI for its supplemental Kavanaugh



background investigations but never received any follow-up from the FBI. Normally the FBI seeks out information rather than refuse to hear it. What explains this blockade, and who directed it?

I am not aware of any purported “blockade” by the FBI nor am I aware of anyone directing a purported “blockade.” Please also see my response to Question 14.

16. Was the process for receiving and following up on relevant tips run according to FBI procedures? If not, why not and at whose call?

I do not have personal knowledge sufficient to respond to this question.

17. The FBI’s supplemental background investigation ended very rapidly. Who decided when it would end?

I do not have personal knowledge sufficient to respond to this question. It was publicly reported that on October 5, 2018, the then-Chairman of the Senate Judiciary Committee issued a report on the Supplemental Background Investigation, outlining the specifics of the investigation and concluding that the Supplemental Background Investigation “confirms what the Senate Judiciary Committee concluded after its investigation: there is no corroboration of the allegations made by Dr. Ford or Ms. Ramirez.” *See* Supplemental FBI Investigation Executive Summary, <https://www.grassley.senate.gov/news/news-releases/supplemental-fbi-investigation-executive-summary> (emphasis omitted).

**Nomination of Katherine A. Crytzer, to be United States District Court Judge for the  
Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has used various formulations to describe the kind of fundamental rights that Fourteenth Amendment substantive due process protects, including the formulation in *Washington v. Glucksberg*, 521 U.S. 702 (1997). If confirmed, I would fully and faithfully apply relevant Supreme Court and Sixth Circuit precedent.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes. The Supreme Court has considered express enumeration of a right in the Bill of Rights as “powerful evidence that the right was regarded as fundamental.” *McDonald v. City of Chicago*, 561 U.S. 742, 769 (2010).

- b. Would you consider whether the right is deeply rooted in this nation’s history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation’s history and tradition?

Yes, consistent with *Washington v. Glucksberg*, I would consider whether the rights in question are “objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” 521 U.S. 702, 720-21 (1997) (citations and quotations omitted). The Supreme Court has looked to historical references, treatises, state constitutions, and other sources to perform this inquiry.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of any court of appeals?

Yes, as a lower court judge, I would fully and faithfully apply relevant Supreme Court and Sixth Circuit precedent. If there were no binding precedent, I would also consider precedent of other circuit courts of appeals.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has been recognized by any court of appeals?

Yes. Please see my response to Question 1(c).

- e. Would you consider whether the right is central to “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life”? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Both *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and *Lawrence v. Texas*, 539 U.S. 558 (2003), are binding precedent of the Supreme Court. If confirmed as a lower court judge, I would fully and faithfully apply relevant Supreme Court precedent.

- f. What other factors would you consider?

If confirmed, I would consider any other relevant and applicable factors identified by the Supreme Court or Sixth Circuit.

2. Does the Fourteenth Amendment’s promise of “equal protection” guarantee equality across race and gender, or does it only require racial equality?

In *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment applies to sex.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my response to Question 2. If confirmed as a lower court judge, I would be bound by applicable Supreme Court precedent.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

In *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), the Court held that the single-sex admissions policy of a state nursing school violated the Equal Protection Clause, prior to *United States v. Virginia*. I am not familiar with the Supreme Court’s decision-making process with respect to granting certiorari in cases presenting questions related to the Equal Protection Clause and sex prior to 1982.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

In *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment protects the right of gay and lesbian couples to marry “on the same terms as accorded to couples of the opposite sex.” 576 U.S. 644, 680 (2015). If confirmed, I would fully and faithfully

apply *Obergefell*. Other aspects of the Fourteenth Amendment's applicability to gay and lesbian couples are the subject of pending litigation.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

The scope of the Fourteenth Amendment's applicability to transgender people is the subject of pending or impending litigation. As a judicial nominee, it would be inappropriate to opine on the issue. See Code of Conduct for United States Judges, Canons 2A, 3A(6).

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

In *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the Supreme Court held that there is a constitutional right to privacy that protects a woman's right to use contraceptives. If confirmed, I would fully and faithfully apply *Griswold* and *Eisenstadt*.

- a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

In multiple cases, including most recently *June Medical Services v. Russo*, 140 S.Ct. 2103 (2020), the Supreme Court has recognized a constitutional right to privacy that protects a woman's right to obtain an abortion. If confirmed, I would fully and faithfully apply *June Medical* and other relevant Supreme Court precedent.

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court held that there is a constitutional right to privacy that protects intimate consensual conduct between two adults regardless of their sexes or genders. If confirmed, I would fully and faithfully apply *Lawrence*.

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 3, 3(a), and 3(b).

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the

stigma of knowing their families are somehow lesser.” This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

- a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

The Supreme Court has stated that in some circumstances, a lower court may consider evidence of changing societal understanding. If confirmed, I will fully and faithfully apply the Supreme Court’s precedent on this issue, including *Virginia* and *Obergefell*.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

A lower court may consider sociology, scientific evidence, and data in judicial analysis when relevant and appropriate under Supreme Court or binding court of appeals precedent.

5. In the Supreme Court’s *Obergefell* opinion, Justice Kennedy explained, “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians.”

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

In *Obergefell*, the Supreme Court held that the Fourteenth Amendment protects the right of gay and lesbian couples to marry “on the same terms as accorded to couples of the opposite sex.” *Obergefell v. Hodges*, 576 U.S. 644, 680 (2015). In *Lawrence*, the Supreme Court held that there is a constitutional right to privacy that protects intimate consensual conduct between two adults regardless of their sexes or genders. 539 U.S. 558, 579 (2003). More recently, in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, the Supreme Court stated that “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth.” 138 S.Ct. 1719, 1727 (2018). If confirmed, I would fully and faithfully apply these Supreme Court precedents.

- b. When is it appropriate to apply Justice Kennedy’s formulation of substantive due process?

Please see my response to Questions 1(a-f) and 5(a).

6. You are a member of the Federalist Society, a group whose members often advocate an “originalist” interpretation of the Constitution.
  - a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s

original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Although I have not studied the question as a legal matter, I am aware that scholars have argued that *Brown* is consistent with originalism. See, e.g., Michael W. McConnell, *The Originalist Case for Brown v. Board of Education*, 19 Harvard J. Law & Pub. Policy 457 (1995); *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1835 n.10 (2020) (Kavanaugh, J., dissenting).

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Nov. 25, 2020).

If confirmed, I will fully and faithfully apply Supreme Court and Sixth Circuit precedent on the meaning of the terms “the freedom of speech,” “equal protection,” and “due process of law.”

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

In *District of Columbia v. Heller*, the Supreme Court recognized the importance of the text, structure, and original understanding of the Constitution in interpreting the Second Amendment, including the public’s understanding of the Second Amendment’s meaning at the time of its adoption. 554 U.S. 570 (2008). If confirmed, I would fully and faithfully apply applicable precedent from the Supreme Court and Sixth Circuit.

- d. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my response to Question 6(c).

- e. What sources would you employ to discern the contours of a constitutional provision?

Please see my response to Question 6(c).

**Questions for the Record for Katherine (Katie) Amber Crytzer  
From Senator Mazie Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:
  - a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**  
  
No.
  - b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**  
  
No.
2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.
  - a. **Do you agree that training on implicit bias is important for judges to have?**  
  
A federal judge is duty-bound to administer justice without bias or favor. Training can be helpful to assist judges in successfully performing this duty.
  - b. **Have you ever taken such training?**  
  
Yes, as part of my training at the Department of Justice.
  - c. **If confirmed, do you commit to taking training on implicit bias?**  
  
If confirmed, I commit to participating in training opportunities offered by the Administrative Office of the Courts and the Federal Judicial Center that will help me successfully perform my judicial duties.
3. You described your policy portfolio at the Justice Department's Office of Legal Policy (OLP) as including "regulatory reform."
  - a. **What are the "regulatory reform" policies you worked on during your time at OLP?**  
  
I have worked on regulatory reform policies designed to enhance good government and ensure that the Department of Justice performs its regulatory activity lawfully, responsibly, and transparently.

- b. **Were you involved in any way in the Department of Justice's (DOJ) withdrawal of a guidance document that provided protections for transgender students, including the right to use bathrooms corresponding with their gender identity? If so, please describe your involvement.**

Not to my recollection. I understand that the withdrawal of a Dear Colleague Letter concerning the use of bathrooms in public schools occurred in February 2017, while I was still serving as an Assistant United States Attorney.

- c. **Were you involved in any way in a DOJ internal memo directing senior civil rights officials to examine how decades-old "disparate impact" regulations might be changed or removed? If so, please describe your involvement.**

Not to my recollection.

- d. **Have you been involved in any way in the DOJ process of reviewing or reconsidering use of "disparate impact" to address discrimination? If so, please describe your involvement.**

Not to my recollection.

4. Your college magazine described you as "serv[ing] in an influential role in the decisionmaking" of the Trump administration and "helping shepherd Supreme Court nominee Brett Kavanaugh through a tumultuous, but successful, Senate confirmation hearing."

- a. **What was your role in 'shepherding' Brett Kavanaugh through his 'tumultuous' Supreme Court confirmation hearing?**

I served on a team of attorneys at the Department of Justice that facilitated the Senate's consideration of then-Judge Brett M. Kavanaugh to serve on the Supreme Court.

- b. **You described your office's work on Brett Kavanaugh's Supreme Court confirmation process as "thrilling, humbling, and an honor." Did you watch Dr. Ford's testimony about being sexually assaulted by Mr. Kavanaugh?**

Yes, I watched Dr. Christine Blasey Ford's testimony.

- c. **Please explain your statement of how Brett Kavanaugh's Supreme Court confirmation process was 'thrilling, humbling, and an honor' to you.**

The statement that you reference is incomplete and taken out of context. When describing my work at the Office of Legal Policy, I stated: "It's humbling and an honor to be doing the work each of us is doing at the Office of Legal Policy every day."

5. You are currently a Trump political appointee. When you were nominated to be Inspector General of the Tennessee Valley Authority, you refused to even acknowledge President



Trump's attacks on Inspectors General who tried to do their job and conduct oversight of the Trump administration.

- a. **An inspector general must be willing to act independently from the President who nominated her, and such independence is even more critical as a federal judge with a lifetime appointment. Have you taken any action showing your independence from President Trump?**

If confirmed to serve as a district court judge, I will act with integrity and independence as I have throughout my legal career.

- b. **Have you disagreed with the President's cruel and inhumane family separation policy?**

In my current capacity, I serve as a lawyer for the Department of Justice. As such, it would not be appropriate for me to opine on my personal agreement or disagreement with any Department initiative or policy.

- c. **Have you disagreed with his numerous false claims of voter fraud?**

As a judicial nominee, it would be inappropriate to opine on an issue that is the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6).

- d. **Have you disagreed with his refusal to denounce white supremacists and his statement telling them to "stand back and stand by"?**

I reject racism and white supremacy; both are unacceptable.

**Nomination of Katherine Amber Crytzer  
United States District Court for the Eastern District of Tennessee  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. You were previously nominated to be the Inspector General of the Tennessee Valley Authority. Following your hearing before the Senate Environment and Public Works Committee, Senator Carper—the Ranking Member of the Committee—sent you numerous Questions for the Record to elicit your views on the importance of the independence of Inspectors General. Unfortunately, you were unable provide suitable answers to nearly all of those questions, which resulted in Senator Carper opposing your nomination.

- a. In response to Senator Carper’s Question for the Record on whether it is appropriate to attack Inspectors General or the credibility of their work, you said, “I am not privy to the information that the President considered in making his remarks . . . .” Be that as it may, with the information that is available to you in the public record, which is more than sufficient, do you believe it is appropriate for the President to attack the credibility of Inspectors General when their findings do not fit his preferred narrative?

As a judicial nominee, the Code of Conduct for United States Judges prohibits me from opining on the propriety of comments made by the President, an elected political official. *See* Code of Conduct for United States Judges, Canon 5(C).

- b. Are you able to state unequivocally whether you believe it is appropriate for President Trump to berate and attack Inspectors General on Twitter and in public comments when he disagrees with their work?

Please see my response to Question 1(a).

2. While in the Office of Legal Policy at the Department of Justice, you worked on the nomination of Associate Justice Kavanaugh to the U.S. Supreme Court.<sup>1</sup> Were you at all aware of any efforts or actions by the White House or the Department of Justice to limit the scope of the Federal Bureau of Investigation’s probe of sexual assault allegations made against Justice Kavanaugh? If so, please describe those efforts or actions that limited the scope of the investigation.

It was publicly reported that on October 5, 2018, the then-Chairman of the Senate Judiciary Committee stated that the FBI opened a supplemental background investigation on then-Judge Brett M. Kavanaugh at the Senate Judiciary Committee’s request. *See* Supplemental FBI Investigation Executive Summary, <https://www.grassley.senate.gov/news/news-releases/supplemental-fbi-investigation-executive-summary>. “The request was for an investigation into [then] current allegations against Judge Kavanaugh.” *Id.*

3. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

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<sup>1</sup> SJQ at p. 12

In general terms, I espouse an originalist jurisprudential philosophy, which means that in interpreting the Constitution, the meaning of the Constitution was fixed at the time it was ratified and, absent binding precedent, the original public meaning of the Constitution controls.

4. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

In general terms, I espouse a textualist jurisprudential philosophy, which means that in interpreting a statute, the meaning of the statute was set at the time the text was enacted and, absent binding precedent, the ordinary public meaning of text at the time it was enacted controls.

5. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court has held that "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If confirmed, I will follow Supreme Court and Sixth Circuit precedent on the use of legislative history.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my response to Question 5(a).

6. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

I understand judicial restraint to mean that the proper role of the judiciary is to render a legal decision based on the facts and the law within the confines of a particular case or controversy before the court. It is important for a district court judge to act consistent with his or her proper judicial role.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>2</sup> Was that decision guided by the principle of judicial restraint?

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<sup>2</sup> 554 U.S. 570 (2008).

As a judicial nominee, it would be inappropriate for me to opine on the correctness or legal reasoning of an opinion, concurrence, or dissent authored by a Justice of the Supreme Court. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply the Court's opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>3</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to opine on the correctness or legal reasoning of a Supreme Court opinion. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply the Court's opinion in *Citizens United v. FEC*, 558 U.S. 310 (2010).

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>4</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to opine on the correctness or legal reasoning of a Supreme Court opinion. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6). If I am fortunate enough to be confirmed as a district court judge, I would fully and faithfully apply the Court's opinion in *Shelby County v. Holder*, 570 U.S. 529 (2013).

7. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>5</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>6</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

I have not specifically studied whether in-person voter fraud is a widespread problem in American elections at the state or federal level. As a judicial nominee, it would not be appropriate for me to offer an opinion on a matter of public policy that is the subject of pending litigation. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6).

<sup>3</sup> 558 U.S. 310 (2010).

<sup>4</sup> 570 U.S. 529 (2013).

<sup>5</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>6</sup> *Id.*

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

I am aware that the Supreme Court and lower courts have addressed specific legal challenges relating to particular state voter ID laws, *see, e.g., Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008); *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), but I have not studied whether any particular voter ID law could suppress votes. As a judicial nominee, it would not be appropriate for me to offer an opinion on a matter of public policy that is the subject of impending or pending litigation. *See* Code of Conduct for United States Judges, Canons 2A, 3A(6).

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to Question 7(b).

8. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>7</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>8</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>9</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>10</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

The question of whether implicit racial bias exists in our criminal justice system is the subject of significant academic research and literature and political and policy debate. In my own experience, I did not witness racial bias in my work as an Assistant United States Attorney. If I am fortunate enough to be confirmed, I commit to administering justice without bias or favor.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Based on statistics related to the federal prison population, I understand that racial minorities are disproportionately represented in federal prisons.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our

<sup>7</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>8</sup> *Id.*

<sup>9</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>10</sup> *Id.*

criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

Prior to my nomination, I have studied issues of race, the opioid epidemic, violent crime, and criminal justice in America's federal prison system. Most recently, I studied the United States Sentencing Commission's 2019 Annual Report and Sourcebook of Federal Sentencing Statistics.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>11</sup> Why do you think that is the case?

I have not studied the particular report you cite and therefore cannot offer a view as to the disparity in sentences. If confirmed, I commit to avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, consistent with 28 U.S.C. § 3553(a).

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>12</sup> Why do you think that is the case?

I am not familiar with the particular study you cite and therefore cannot offer a view as to the disparity in charging. If confirmed, I commit to avoiding unwarranted disparities among defendants with similar records who have been found guilty of similar crimes.

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Federal district court judges committed to the rule of law can contribute to a more just criminal justice system. As one example, federal district court judges have a statutory duty to consider certain factors when imposing a sentence, including "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *See* 18 U.S.C. § 3553(a)(6).

9. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>13</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>14</sup>

<sup>11</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>12</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>13</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>14</sup> *Id.*

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied state-specific incarceration rates compared to crime rates in the specific state, and as such, I am not in a position to assess any link between the two.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to Question 9(a).

10. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

11. Do you believe that *Brown v. Board of Education*<sup>15</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes. *Brown v. Board of Education*, 347 U.S. 483 (1954), is a landmark opinion of the Supreme Court that holds a unique importance in our Nation's history.

12. Do you believe that *Plessy v. Ferguson*<sup>16</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

*Brown v. Board of Education*, 347 U.S. 483 (1954), a landmark opinion of the Supreme Court, overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896). As I stated in response to Question 11, *Brown* was correctly decided.

13. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

My answers contained in this document are my own. I understand that it is generally unacceptable and contrary to the Code of Conduct for United States Judges for a judicial nominee to "grade, or give a thumbs-up or a thumbs-down on particular Supreme Court cases" as Justice Elena Kagan explained at her Senate Judiciary Committee hearing.

14. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict" in presiding over civil fraud lawsuits against Trump University because he was "of Mexican heritage."<sup>17</sup> Do you agree with President Trump's view that a judge's race or ethnicity can be

<sup>15</sup> 347 U.S. 483 (1954).

<sup>16</sup> 163 U.S. 537 (1896).

<sup>17</sup> Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict'*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

a basis for recusal or disqualification?

Under 28 U.S.C. § 455, a judge's race or ethnicity is not listed as a basis for recusal. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from opining on the propriety of comments made by the President, an elected political official. *See* Code of Conduct for United States Judges, Canon 5(C).

15. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."<sup>18</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

In *Zadvydas v. Davis*, the Supreme Court held that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." 533 U.S. 678, 693 (2001). As a judicial nominee, the Code of Conduct for United States Judges prohibits me from opining on the propriety of comments made by the President, an elected political official. *See* Code of Conduct for United States Judges, Canon 5(C).

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<sup>18</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.



UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Joseph Dawson, III

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

United States District Judge for the District of South Carolina

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

Charleston County Attorney's Office  
4045 Bridge View Drive, Suite B314  
North Charleston, South Carolina 29405

Joseph Dawson, III, Attorney at Law  
Post Office Box 41367  
North Charleston, South Carolina 29423

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

1970; Fort Jackson, South Carolina

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

1994 – 1997, University of South Carolina School of Law; J.D., 1997

1988 – 1991, The Citadel, The Military College of South Carolina; B.A., 1991

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

2019 – present

South Carolina Judicial Department  
1220 Senate Street, Suite 101  
Columbia, South Carolina 29201  
Board of Law Examiners

2001 – present  
Joseph Dawson, III, Attorney at Law  
Post Office Box 41367  
North Charleston, South Carolina 29423  
Part-Time Solo Practitioner

1996 – present  
County of Charleston, South Carolina  
Charleston County Attorney's Office  
4045 Bridge View Drive, Suite B314  
North Charleston, South Carolina 29405  
County Attorney (2001 – present)  
Deputy County Attorney (2000 – 2001)  
Assistant County Attorney (1997 – 2000)  
Law Clerk (Summer 1997)  
Law Clerk (Summer 1996)

2009  
United States Army Reserve  
1 Reserve Way  
Saint Louis, Missouri 63132  
Judge Advocate General

1999 – 2009  
South Carolina Army National Guard  
Joint Forces Headquarters  
1 National Guard Road  
Columbia, South Carolina 29201  
Judge Advocate General

Summer 1995  
South Carolina Attorney General's Office  
1000 Assembly Street, Room 519  
Columbia, South Carolina 29201  
Law Clerk

1991 – 1994  
County of Charleston, South Carolina  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
Project Analyst (1992 – 1994)

Management Intern (1991 – 1992)

1991

Andrew J. Savage, III, Attorney at Law (now Savage Law Firm)  
15 Prioleau Street  
Charleston, South Carolina 29401  
Runner/Intern

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.

2009, United States Army, Reserve Control Group (Individual Ready Reserve), Captain, Honorable Discharge.

1999 – 2009, South Carolina Army National Guard, Judge Advocate General's Corps, Captain.

I registered for the selective service upon turning 18.

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

Military Awards

Army Reserve Components Achievement Medal  
Army Service Ribbon  
South Carolina Palmetto Service Ribbon

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 (1999 – 2007)

International Municipal Lawyers Association (2011 – 2020)

South Carolina Association of Counties County Attorneys (1998 – present)

South Carolina Bar (1997 – present)

South Carolina Board of Law Examiners (2019 – present)

10. **Bar and Court Admission:**

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

South Carolina, 1997

There have been no lapses in membership.

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

Supreme Court of the United States, 2003

United States Court of Appeals for the Fourth Circuit, 1999

United States District Court for the District of South Carolina, 1998

Supreme Court of South Carolina, 1997

There have been no lapses in membership.

11. **Memberships:**

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

The Harbour Club, Member (2003 – present)

Coosaw Creek Country Club, Golf Member (2005 – present)

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

To the best of my knowledge none of the organizations listed above currently 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. The Harbour Club was founded in 1994,

and the Coosaw Creek Country Club was founded in 1991.

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 am not aware of any materials responsive to this request.

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

I am not aware of any materials responsive to this request.

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

As County Attorney for the County of Charleston, I have regularly attended meetings of Charleston County Council and Council committees since 2001. These meetings have generally occurred at least four times per month (excluding the summer) with additional meetings held as needed. During closed sessions of these meetings, Council regularly asked me to provide legal opinions concerning confidential legal matters. Those closed proceedings were not open to the public, in accordance with provisions of the South Carolina Freedom of Information Act. I have also regularly attended the open session of meetings of Charleston County Council and Council committees at which I made occasional comments and for which minutes were prepared. The minutes of the open meetings are available back to 2009 at <https://www.charlestoncounty.org/departments/county-council/index.php>, for which the links below are responsive to the requests herein. Video recordings of these meetings are also available at <https://video.ibm.com/channel/charleston-county-government>.

September 3, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding provisions of the Emergency Ordinance to Require Face Coverings. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/09-03-20.pdf>.

August 6, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the county's legal position on restrictions imposed by cities on beach access. Meeting minutes are at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/08-06-20.pdf> and video recording at <https://video.ibm.com/recorded/127522055>

July 2, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding provisions of the Emergency Ordinance to Require Face Coverings. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/7-2-2020.pdf> and video recording at <https://video.ibm.com/recorded/127113130>.

June 11, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding provisions of the state of emergency ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/06-11-20.pdf>.

June 1, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the adoption of a curfew ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/06-01-20.pdf>.

May 28, 2020: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding the state of emergency ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/05-28-20.pdf>.

April 2, 2020: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding the state of emergency ordinance, meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/04-02-2020-Finance-Minutes.pdf>.

April 30, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding the state of emergency ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/04-30-2020-Finance-Minutes.pdf>.

March 17, 2020: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding provisions of the state of emergency ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/03-17-20.pdf>.

January 21, 2020: County Council Officer, Charleston County Council,

Charleston, South Carolina. I advised Charleston County Council on matters of parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2020/01-21-20.pdf>.

November 21, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding maintenance agreement for a cemetery. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/11-21-19.pdf>.

November 21, 2019: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding maintenance agreement for a cemetery. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/11-21-2019-Finance-Minutes.pdf>.

September 12, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on the creation of a waste water ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/09-12-19.pdf>.

July 30, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. County Staff made a presentation to the Charleston County Finance Committee regarding redesigns for a new Materials Recovery Facility. A full recording of the presentation is available at <https://video.ibm.com/recorded/123373746>.

June 25, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on matters of parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/06-25-19.pdf>.

June 4, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on matters of parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/06-04-19.pdf>.

May 30, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on the authority of the Greenbelt Advisory Board and parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/05-30-19.pdf>.

May 2, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised the Charleston County Planning and Public Works Committee on the procedures for road abandonments. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/committee-](https://www.charlestoncounty.org/departments/county-council/committee-minutes/Planning%20and%20Public%20Works/05-02-2019-Planning%20and%20Public%20Works-Minutes.pdf)

minutes/Planning-Public-Works/05-02-2019-PPW-Minutes.pdf.

April 23, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on the creation of a waste water ordinance and matters of parliamentary procedures, meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/04-23-19.pdf>.

April 18, 2019: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding matters of parliamentary procedure. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/04-18-2019-Finance-Minutes.pdf>.

April 3, 2019: County Council Officer, South Carolina Joint Bond Review Committee, Special Subcommittee, Columbia, South Carolina. I participated in a joint presentation on behalf of the County of Charleston to the South Carolina Joint Bond Review Committee, Special Subcommittee regarding the County's funding commitment for the Interstate 526/Mark Clark Extension Project. A full recording of the presentation is available at <https://www.scstatehouse.gov/video/archives.php?key=9409&part=1>.

March 21, 2019: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the participation of Council members at Library Board meetings. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2019/03-21-19.pdf>.

March 7, 2019: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding a procurement matter. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/03-07-2019-Finance-Minutes.pdf>.

December 6, 2018: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/12-06-2018-Finance-Minutes.pdf>.

November 27, 2018: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding the composition of the Accommodations Tax Committee. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/11-27-2018-Finance-Minutes.pdf>.

September 25, 2018: County Council Officer, Charleston County Council,



Charleston, South Carolina. I advised Charleston County Council on matters of parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2018/09-25-18.pdf>.

August 16, 2018: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding contract negotiations on a Greenbelt project. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/08-16-2018-Finance-Minutes.pdf>.

May 31, 2018: County Council Officer, Charleston County Council Planning and Public Works Committee, Charleston, South Carolina. I advised the Charleston County Planning and Public Works Committee on the scope of the Historic Preservation Ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Planning-Public-Works/05-31-2018-PPW-Minutes.pdf>.

May 31, 2018: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee regarding parliamentary procedures. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/05-31-2018-Finance-Minutes.pdf>.

April 19, 2018: County Council Officer, Charleston County Council Finance Committee, Charleston, South Carolina. I advised the Charleston County Finance Committee on the Business Inclusion Pilot Program. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/committee-minutes/Finance/04-19-2018-Finance-Minutes.pdf>.

September 26, 2017: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the expenditure of general obligation bonds. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2017/9-26-17.pdf>.

July 21, 2016: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on the wording of a sales tax ballot question and ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2016/07-21-16.pdf>.

June 21, 2016: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a rezoning matter. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2016/06-21-16.pdf>.

November 19, 2015: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding

negotiations with a developer for a Community Enhancement Fund. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2015/11-19-15.pdf>.

June 16, 2015: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding State law requirements for adjusting elected officials pay. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2015/06-02-15.pdf>.

June 2, 2015: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a performance bond for a wastewater treatment facility. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2015/06-02-15.pdf>.

October 7, 2014: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the status of a nuisance lawsuit. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2014/10-07-14.pdf>.

June 17, 2014: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council on the wording of a library referendum question. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2014/06-17-14.pdf>.

February 26, 2013: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding amendments to the zoning ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2013/02-26-13.pdf>.

August 21, 2012: County Council Officer, Charleston County Council, Charleston, South Carolina. I communicated to Charleston County Council on a matter regarding a proposed Smoking Ordinance. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2012/08-21-12.pdf>.

January 5, 2012: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a parliamentary matter. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2012/01-05-12.pdf>.

December 6, 2011: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the use of credit cards to pay taxes. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2011/12-06-11.pdf>.

September 27, 2011: County Council Officer, Charleston County Council, Charleston, South Carolina. I communicated with Charleston County Council regarding redistricting criteria. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2011/09-27-11.pdf>.

September 13, 2011: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a parliamentary matter. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2011/09-13-11.pdf>.

September 7, 2010: County Council Officer, Charleston County Council, Charleston, South Carolina. I communicated with Charleston County Council regarding settlement of the Courthouse lawsuit. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2010/09-07-10.pdf>.

July 13, 2010: County Council Officer, Charleston County Council, Charleston, South Carolina. I communicated with Charleston County Council regarding Solid Waste program. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2010/07-13-10.pdf>.

April 6, 2010: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the sale of County property and advised Council regarding a parliamentary matter. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2010/04-06-10.pdf>.

February 16, 2010: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding conflicts of interests for appointments to the Saint Johns Fire District Commission. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2010/02-16-10.pdf>.

February 2, 2010: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding contributions to the Economic Development Fund. Meeting minutes at <https://www.charlestoncounty.org/departments/county-council/minutes/2010/02-02-10.pdf>.

November 3, 2009: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding recommendations for appointment by the Governor to the Disabilities and Special Needs Board. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/minutes/2009/11\\_03\\_09.pdf](https://www.charlestoncounty.org/departments/county-council/minutes/2009/11_03_09.pdf).

October 6, 2009: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding

taxation on boats. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/minutes/2009/10\\_06\\_09.pdf](https://www.charlestoncounty.org/departments/county-council/minutes/2009/10_06_09.pdf).

September 1, 2009: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding Solid Waste Management plan. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/minutes/2009/09\\_01\\_09.pdf](https://www.charlestoncounty.org/departments/county-council/minutes/2009/09_01_09.pdf).

June 2, 2009: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a parliamentary matter and the disposal of solid waste in Charleston County. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/minutes/2009/06\\_02\\_09.pdf](https://www.charlestoncounty.org/departments/county-council/minutes/2009/06_02_09.pdf).

February 17, 2009: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding legal provisions on applications for appointments. Meeting minutes at [https://www.charlestoncounty.org/departments/county-council/minutes/2009/02\\_17\\_09.pdf](https://www.charlestoncounty.org/departments/county-council/minutes/2009/02_17_09.pdf).

June 20, 2006: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding appointments to the Trident Workforce Investment Board. Meeting minutes supplied.

June 6, 2006: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding amendments to proposed Budget Ordinance. Meeting minutes supplied.

December 20, 2005: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding appointment to the Parks and Recreation Commission. Meeting minutes supplied.

October 18, 2005: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding gifts of real property to Charleston County. Meeting minutes supplied.

June 21, 2005: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding appointments to the South Carolina Coastal Council. Meeting minutes supplied.

May 24, 2005: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding collection of judgments. Meeting minutes supplied.

February 1, 2005: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding dual office holding. Meeting minutes supplied.

July 27, 2004: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding Sales Tax Referendum. Meeting minutes supplied.

June 22, 2004: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding Sales Tax Referendum. Meeting minutes supplied.

June 1, 2004: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a parliamentary matter. Meeting minutes supplied.

February 3, 2004: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a parliamentary matter. Meeting minutes supplied.

December 16, 2003: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding appointments to the Saint John's Fire District. Meeting minutes supplied.

November 18, 2003: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the use of the Capital Improvement Account to pay for radio replacements. Meeting minutes supplied.

January 21, 2003: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding a user fee appeal. Meeting minutes supplied.

July 2, 2002: County Council Officer, Charleston County Council, Charleston, South Carolina. I advised Charleston County Council regarding the County's compliance with environmental laws and historically significant sites on County property. Meeting minutes supplied.

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

August 28, 2019: Panelist, "Contracting at a Tipping Point," Resource Recycling

Conference and Trade Show, New Orleans, Louisiana. I have no notes, transcripts, or recordings of this program. I discussed contracting with local governments from the government's perspective. The address of the Resource Recycling Conference is Post Office Box 42270, Portland, Oregon 97242.

February 17, 2016: Panelist, "Careers for Lawyers with Local Government," Charleston School of Law, Charleston South Carolina. I have no notes, transcripts, or recordings. The address of the Charleston School of Law is 81 Mary Street, Charleston, South Carolina 29403.

June 2010 (estimated): Speaker, Fort Dorchester High School Baccalaureate Service, Old Fort Baptist Church, 10505 Dorchester Road, Summerville, South Carolina. I spoke to graduating high school seniors about making decisions. I have no notes, transcript or recording from this event. The address of Fort Dorchester High School is 8500 Patriot Boulevard, North Charleston, South Carolina 29420.

1999 – 2008: Judge Advocate General's Corps Officer, South Carolina Army National Guard, Columbia, South Carolina 29201. I gave annual legal briefings and deployment briefings to soldiers on Wills, Power of Attorneys, the Servicemembers' Civil Relief Act, the Lautenberg Amendment and scams targeting military families. I have no notes, transcripts, or recordings. Press coverage for a briefing given on June 14, 2004 for the local chapter of the Blue Star Mothers and Blue Star Families, which took place at the Lonnie Hamilton III Public Services Building, 4045 Bridge View Dr., North Charleston, is 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 am not aware of any materials responsive to this request.

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

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_
  - i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]

civil proceedings: \_\_\_\_\_ %  
 criminal proceedings: \_\_\_\_\_ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
  - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
  - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
  - e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- 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.

Charleston County Attorney (2001 – present), Charleston, South Carolina;  
appointed by Charleston County Council

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 been a member of or held any office in any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I have not clerked for a judge.

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

2001 – present



Joseph Dawson, III, Attorney at Law  
Post Office Box 41367  
North Charleston, South Carolina 29423  
Part-Time Solo Practitioner

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

1997 – present  
County of Charleston, County Attorney's Office  
4045 Bridge View Drive, Suite B314  
North Charleston, South Carolina 29405  
Assistant County Attorney (1997 – 2000)  
Deputy County Attorney (2000 – 2001)  
County Attorney (2001 – present)

1999 – 2009  
South Carolina Army National Guard  
Joint Forces Headquarters  
1 National Guard Road  
Columbia, South Carolina 29201  
Judge Advocate General

2019 – present  
South Carolina Judicial Department  
Columbia, South Carolina 29201  
Board of Law Examiners

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

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

b. Describe:

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

After being admitted to the South Carolina Bar in 1997, I worked as an Assistant County Attorney in the Charleston County (South Carolina) Attorney's Office. As an Assistant County Attorney, I handled criminal prosecutions in magistrate's court and civil litigation. I was promoted to Deputy County Attorney in 2000, where my duties and responsibilities

increased to include staff supervision and case management. In 2001, Charleston County Council appointed me to the position of County Attorney, where I am responsible for managing and overseeing all legal matters for the County of Charleston, South Carolina to include countywide elected and appointed officials. The County has approximately 2,500 employees and a five hundred-million-dollar total annual budget. I supervise staff attorneys, outside counsel, support staff, and a \$1.7 million-dollar operating budget.

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

My primary client has been the County of Charleston.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
- i. Indicate the percentage of your practice in:
- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 10% |
| 2. state courts of record:  | 65% |
| 3. other courts:            | 5%  |
| 4. administrative agencies: | 20% |
- ii. Indicate the percentage of your practice in:
- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 90% |
| 2. criminal proceedings: | 10% |
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

At least 22 trials – 10 as sole counsel or chief counsel; 12 as supervising second chair

- i. What percentage of these trials were:
- |              |     |
|--------------|-----|
| 1. jury:     | 25% |
| 2. non-jury: | 75% |
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- the date of representation;
  - the name of the court and the name of the judge or judges before whom the case was litigated; and
  - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. 273, 831 S.E.2d 412 (2019)

I represented the Charleston County Assessor as lead attorney at trial and on appeal before the South Carolina Court of Appeals and the South Carolina Supreme Court. University Ventures LLC constructed a new 115-room Hampton Inn and Suites, and when it received its property tax assessment it challenged whether the County Assessor properly conducted the quadrennial reassessment and whether new improvements should be taxed in the same year. I served as co-counsel at trial, co-drafted the appellate briefs, and argued the case on appeal before the appellate courts. The trial court ruled in favor of University Ventures and on appeal, the South Carolina Court of Appeals reversed the trial court in part and affirmed in part. On Petition for Certiorari, the South Carolina Supreme Court affirmed the Charleston County Assessor's method of valuing the property and reversed the South Carolina Court of Appeals regarding the proper method to conduct a quadrennial reassessment.

Dates of Representation: 2014

Courts and Presiding Judges: South Carolina Administrative Law Court, Hon. Shirley C. Robinson;  
South Carolina Court of Appeals, Hon. James E. Lockemy, Hon. Aphrodite K. Konduros, and Hon. Stephanie P. McDonald;  
South Carolina Supreme Court Hon. Donald W. Beatty, Hon. John W. Kittredge, Hon. Kaye G. Hearn, Hon. John C. Few, and Hon. George C. James, Jr.

Co-Counsel

Bernard E. Ferrara, Jr. (Trial and Appellate Co-Counsel)  
Austin A. Bruner (Trial Co-Counsel)  
Johanna S. Gardner (Appellate Co-Counsel)  
Charleston County Attorney's Office

4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

Opposing Counsel

Morris A. Ellison  
William T. Dawson  
Womble Carlyle Sandridge & Rice, L.L.P.  
Post Office Box 999  
Charleston, South Carolina 29402  
(843) 722-3400

2. *James Early Trust v. Charleston Cty. Assessor*, 2018 S.C. Unpub. LEXIS 14, 2018 WL 1617720

This case involved a married couple where one spouse was domiciled in South Carolina and the other in a different state. I represented the Charleston County Assessor as lead attorney at trial and on appeal before the South Carolina Supreme Court and on remand to the trial court. The South Carolina spouse applied for a special tax assessment for owner-occupied residence, and the Assessor denied the spouse the special tax assessment because her spouse was domiciled in a different state. The taxpayers challenged the constitutionality of the statute, and the trial court dismissed the action because it lacked subject matter jurisdiction to adjudicate facial challenges to a statute. I co-drafted the briefs and argued the case before the trial court and the South Carolina Supreme Court. The South Carolina Supreme Court reversed the trial court's holding, finding that the challenge was an as applied challenge, rather than a facial challenge to the statute, and remanded the case. On remand, the trial court found in favor of the Assessor that the taxpayers did not qualify for the special tax treatment under South Carolina law, because both spouses were not domiciled in South Carolina.

Dates of Representation: 2015 – 2018

Courts and Presiding Judges: South Carolina Administrative Law Court, Hon. Ralph King Anderson, III;  
South Carolina Supreme Court, Hon. Donald W. Beatty, Hon. John W. Kittredge, Hon. Kaye G. Hearn, Hon. John C. Few, and Hon. George C. James, Jr.

Co-Counsel

Bernard E. Ferrara, Jr. (Appellate Co-Counsel)  
Johanna S. Gardner (Trial and Appellate Co-Counsel)  
Charleston County Attorney's Office  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

Opposing Counsel

G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Boulevard, Suite 200  
(843) 856-4488

3. *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 669 S.E.2d 337 (2008)

I represented the County of Charleston as lead attorney (at trial and on appeal) with counsel for a local utility, which sought to rezone its property to a Planned Development so that it could expand an existing electrical substation and to construct a cellphone tower on its property. The Plaintiff, a competitor in the cellphone industry, challenged Charleston County Council's rezoning of the property. I co-drafted the briefs and argued the case before the trial court and the South Carolina Supreme Court. The trial court dismissed the action because the Plaintiff lacked standing to challenge the rezoning under South Carolina law. The Plaintiff appealed the trial court's decision and the South Carolina Supreme Court on certiorari affirmed the trial court's ruling to dismiss the case.

Dates of Representation: 2005 – 2008

Courts and Presiding Judges: South Carolina Circuit Court, Hon. R. Markley Dennis, Jr.; South Carolina Supreme Court, Hon. Jean H. Toal, Hon. John H. Waller, Jr., Hon. Donald W. Beatty, Hon. John W. Kittredge, and Hon. Costa M. Pleicones

Co-Counsel

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Jessica C. Crowson (Counsel for Co-Respondents SCANA Communications and South Carolina Electric & Gas)  
Rogers Lewis Jackson Mann & Quinn, LLC  
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Columbia, South Carolina 29211  
(803) 256-1268

Opposing Counsel

Stanley E. Barnett  
Smith, Bundy, Bybee & Barnett  
1037 Chuck Dawley Boulevard

Mount Pleasant, South Carolina 29464  
(843) 884-1031

4. *Brackenbrook N. Charleston, LP v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004)

I represented the County of Charleston as co-lead attorney (at trial and on appeal) in a class action lawsuit brought by several taxpayers in Charleston County seeking a refund of ad valorem property taxes paid as a result of a special tax levy ordinance that was declared void by the South Carolina Supreme Court. I co-drafted the briefs before the trial court and the South Carolina Supreme Court. The trial court entered an order certifying the class and ordering refunds. The County appealed the Order, and the South Carolina Supreme Court reversed the trial court and found that it lacked subject matter jurisdiction to certify the class and award refunds under the South Carolina Revenue Procedures Act.

Dates of Representation: 2002 – 2004

Courts and Presiding Judges: South Carolina Circuit Court, Hon. A. Victor Rawl;  
South Carolina Supreme Court, Hon. E.C. Burnett, III, Hon. Ernest Kinard, Jr., Hon. John H. Waller, Jr., Hon. James E. Moore, and Hon. Costa M. Pleicones

Co-Counsel

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M. Dawes Cooke, Jr. (Co-Lead Attorney)  
Barnwell, Whaley, Patterson & Helms, LLC  
288 Meeting Street, Suite 200  
Charleston, South Carolina 29402  
(843) 577-7700

Opposing Counsel

G. Trenholm Walker  
Walker, Gressette, Freeman & Linton, LLC  
66 Hasell Street  
Charleston, South Carolina 29401  
(843) 727-2208

5. *Glover v. Cty. of Charleston*, 361 S.C. 634, 606 S.E.2d 773 (2004)

A group of landowners challenged the constitutionality of the County's newly adopted Comprehensive Plan and Zoning Ordinance. The landowners claimed that the new zoning deprived them of due process and equal protection. In addition, the landowners claimed the zoning regulations resulted in a taking of their property without just compensation. I served as lead counsel for the County of Charleston. I co-drafted the briefs and argued the motion for summary judgment before the trial court. The trial court granted summary judgment in favor of the County on all of the Plaintiffs' causes of action. I co-drafted the briefs before the South Carolina Supreme Court where it affirmed the trial court's decision.

Dates of Representation: 2000 – 2004

Courts and Presiding Judges: South Carolina Circuit Court, Hon. A. Victor Rawl; South Carolina Supreme Court, Hon. Jean H. Toal, Hon. John H. Waller, Jr., Hon. Costa M. Pleicones, Hon. E.C. Burnett, III, and Hon. James E. Moore

Co-Counsel

Bernard E. Ferrara, Jr.  
Charleston County Attorney's Office  
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North Charleston, South Carolina 29405  
(843) 958-4010

Opposing Counsel

Thomas R. Goldstein  
Belk, Cobb, Infinger, & Goldstein, PA  
2344 Cosgrove Avenue  
North Charleston, South Carolina 29405  
(843) 554-5566

6. *City of N. Charleston v. Cty. of Charleston*, 363 S.C. 527, 611 S.E.2d 920 (2005)

The City of North Charleston challenged the constitutionality of a state statute implemented by Charleston County which authorized individual counties to provide an exemption that would limit the appreciation of the fair market value of real property by fifteen percent. I served as co-lead counsel representing the County of Charleston. The case was heard in the original jurisdiction of the South Carolina Supreme Court. I managed the litigation, discovery, depositions, and co-drafted the briefs. The South Carolina Supreme Court ruled that the statute was unconstitutional, and the County ordinance was therefore invalid.

Dates of Representation: 2003 – 2005

Court and Presiding Judges: South Carolina Supreme Court, Hon. Jean H. Toal, Hon.

John H. Waller, Jr., Hon. Costa M. Pleicones, Hon. E.C. Burnett, III, and Hon. James E. Moore

Co-Counsel

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Charleston, South Carolina 29402  
(843) 577-7700

Opposing Counsel

J. Brady Hair  
Derk Van Raalte  
Hair & Van Raalte  
2500 City Hall Lane  
North Charleston, South Carolina 29406  
(843) 572-8700

7. *Charleston Cty. Parents for Pub. Sch., Inc. v. Moseley*, 343 S.C. 509, 541 S.E.2d 533 (2001)

This case involved whether the Charleston County School District had the authority to impose a tax levy in excess of 90 mills to operate the public school system in Charleston County. The Charleston County Auditor questioned the School District's authority to exceed the 90-mill cap. I served as co-counsel on the case brought in the original jurisdiction of the South Carolina Supreme Court. I co-drafted the discovery and the briefs, and co-argued the case before the South Carolina Supreme Court. The South Carolina Supreme Court found that the School District had the authority to unilaterally exceed the 90-mill cap and ordered the Auditor to levy sufficient millage to fund the School District's budget even if it exceeded the cap.

Dates of Representation: 2000 – 2001

Court and Presiding Judges: South Carolina Supreme Court, Hon. Jean H. Toal, Hon. John H. Waller, Jr., Hon. Costa M. Pleicones, Hon. E.C. Burnett, III, and Hon. James E. Moore

Co-Counsel



Samuel W. Howell, IV (Co-Lead Counsel)  
 Howell, Linkous & Nettles, LLC  
 106 Broad Street  
 Charleston, South Carolina 29401  
 (843) 266-3800

Opposing Counsel

William E. Craver, III  
 Craver Law Firm, PA  
 Post Office Box 1016  
 Charleston, South Carolina 29402  
 (843) 577-7557

8. *Grand Bees Dev., LLC v. S.C. Dep't of Health & Envtl. Control*, No. 2012-UP-314, 2012 S.C. App. Unpub. LEXIS 403 (Ct. App. May 23, 2012)

The question in this case was whether the Plaintiff, Grand Bees Development LLC, an adjacent property owner to the County's municipal solid waste landfill timely challenged the County's South Carolina Department of Health and Environmental Control permit to vertically expand its landfill. I served as lead counsel representing the County of Charleston. I co-drafted the trial and appellate briefs and argued the case before the South Carolina Court of Appeals. The South Carolina Court of Appeals affirmed the trial court's dismissal of the action in favor of the County.

Dates of Representation: 2009 – 2012

Court and Presiding Judges: South Carolina Circuit Court, Hon. Roger M. Young; South Carolina Court of Appeals, Hon. James E. Lockemy, Hon. Paula H. Thomas, and Hon. H. Bruce Williams

Co-Counsel

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 4045 Bridge View Drive  
 North Charleston, South Carolina 29405  
 (843) 958-4010

Opposing Counsel

G. Trenholm Walker  
 Walker, Gressette, Freeman & Linton, LLC  
 66 Hasell Street  
 Charleston, South Carolina 29401

(843) 727-2208

9. *Fox v. Moultrie*, 379 S.C. 609, 666 S.E.2d 915 (2008)

The primary question in this case was whether an IRS lien survives a tax sale conducted under South Carolina law. I served as lead counsel for the County of Charleston at trial and on appeal to the South Carolina Supreme Court. I co-drafted briefs and I argued the case before the South Carolina Supreme Court. The South Carolina Supreme Court held that the tax sale was valid, but the IRS lien survived the tax sale; and therefore, the successful bidder acquired the property subject to the IRS lien.

Dates of Representation: 2005 – 2008

Court and Presiding Judges: Master-in-Equity, Hon. Mikell R. Scarborough; South Carolina Supreme Court, Hon. Donald W. Beatty, Hon. John H. Waller, Jr., Hon. Costa M. Pleicones, Hon. James E. Lockemy, and Hon. James E. Moore

Co-Counsel

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4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

Opposing Counsel

Lee E. Berlinsky  
United States Attorney's Office for the District of South Carolina  
United States Department of Justice  
Post Office Box 978  
Charleston, South Carolina 29402  
(843) 266-1667

10. *Guardian Tax SC, LLC v. Day et al.*, Civil Action No. 2:18-cv-01686-BHH

This case involved multiple challenges to a Charleston County tax sale by the Plaintiff who as the successful bidder acquired title to a beach front home on the Isle of Palms, South Carolina. The property was purchased subject to a mortgage and an IRS tax lien. I served as lead counsel for the County of Charleston defending the sale and I drafted the briefs in support of the County's motion to dismiss the bidder's claims for damages as a result of purchasing the property subject to liens. The District Court affirmed the tax sale without discharging the IRS liens and granted the County's Motion to Dismiss the County as a defendant in the case.

Dates of Representation: 2018 – present

Court and Presiding Judge: United States District Court, District of South Carolina, Hon. Bruce H. Hendricks

Co-Counsel

Johanna S. Gardner  
Charleston County Attorney's Office  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

Opposing Counsel

Matthew A. Abee  
Nelson Mullins Riley & Scarborough LLP  
1320 Main Street, 17th Floor  
Columbia South Carolina 29201  
(803) 799-2000

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

In addition to the matters described above, I have served as General Counsel to Charleston County since 2001. As County Attorney, Charleston County Council has frequently assigned me to negotiate several large economic development incentives, construction and renovation projects, and privatization initiatives. For example, I worked on financial incentive agreements that relocated the Boeing Company and Mercedes Benz Vans to Charleston County. In addition, I worked on a contract with the South Carolina Department of Transportation and the South Carolina Transportation Infrastructure Bank to construct a \$750 million highway transportation project.

Further, Charleston County Council also assigned me to oversee, provide strategic planning, and to implement various projects, to include but not limited to the resolution of construction defects with the Charleston County Judicial Facility, planning and overseeing the design and construction of a \$66 million consolidated Social Services Campus, and sale of a 400,000 square foot commercial building. In addition, since 2009 Council has tasked me to negotiate contracts and to oversee the planning and development of various aspects of the County's solid waste management program. These assignments have included overseeing the conversion of the County's dual stream recycling system to single-stream, privatization of the Materials Recovery Facility,

privatization of the compost program, the design and construction of a state of the art single stream recycling facility, and the closure of a waste-to-energy facility.

I also serve on the South Carolina Board of Law Examiners.

I have never acted or registered as a lobbyist.

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

I have not taught any courses.

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

None.

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

I have no plans or commitments, or agreements to pursue outside employment.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

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

If confirmed, I will recuse in any litigation where I have ever played a role. I will evaluate recusal in cases involving the County of Charleston. I would also recuse myself in matters involving my family, close friends, and my own financial interests. Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

During my career as an attorney I have served as guardian ad litem in family court cases, and I have volunteered to draft wills and power of attorneys. I have met with disadvantaged and minority civic and community associations and advised them on land use strategies to better their communities. I continue to serve the community through other community outreach initiatives and through the relationships I have developed with local community leaders.

26. **Selection Process:**

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

In early 2020, I expressed an interest in serving as a federal judge to Senator Tim Scott. I received a telephone call on August 7, 2020, from the White House

Counsel's Office asking if I were interested in serving as a District Judge for the District of South Carolina. On August 10, 2020, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice's Office of Legal Policy, and on August 13, 2020, I was contacted by the White House Counsel's Office and informed that I was being considered for a nomination. I have since been in contact with representatives of the Department of Justice and the White House Counsel's Office.

- 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.

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		17	000	Notes payable to banks-secured (auto)		48	512
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		18	408	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		415	000
Real estate owned -- see schedule		567	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		90	000	-- Credit Cards		22	157
Cash value-life insurance							
Other assets itemize:							
				Total Liabilities	1	035	669
				Net Worth		-343	261
Total Assets		692	408	Total Liabilities and Net Worth		692	408
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor -- co-signed note for mortgage of church		550	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

AGNC Investment Corp. stock	\$ 6,435
Mobile Telesystems stock	7,124
Transocean Inc. stock	1,724
Duke Energy Corp. stock	1,052
Money Market	836
South Carolina Retirement System	1,237
Total Listed Securities	<u>\$ 18,408</u>

Real Estate Owned

Personal Residence	<u>\$ 567,000</u>
Total Real Estate Owned	<u>\$ 567,000</u>

Real Estate Mortgages Payable

Personal Residence – Mortgage	<u>\$ 415,000</u>
Total Real Estate Mortgages Payable	<u>\$ 415,000</u>



AFFIDAVIT

I, Joseph Dawson III, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

8 September 2020  
(DATE)

Joseph Dawson III  
(NAME)



Jacinta M. DeJesus  
(NOTARY)

**Nomination of Joseph Dawson III to the United States District Court for the  
District of South Carolina  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1) During your time as County Attorney for Charleston County, South Carolina, you reportedly advised the County on a property deal that involved Donald Trump, Jr. The County sold a vacant hospital building to a private development company that included Donald Trump, Jr. as part of its leadership. After selling the property to the private company, the county agreed to lease a portion of it as the anchor tenant of the new development. According to news reports, the private developer went bankrupt, and the county had to buy the property back for approximately \$33 million. One newspaper reported that the failure of the deal “raise[d] questions about the lease agreement vetted by the county’s legal team.” (David Blade; *Donald Trump Jr., the Former Charleston Naval Hospital, and a Settlement Costing County Taxpayers \$33 Million: How N. Charleston’s Trump Jr. Deal Unraveled*; THE POST AND COURIER (Oct. 16, 2017))

**a) At the time that the County made this lease agreement, were you aware of financial problems with the private developers?**

Charleston County entered a lease with Chicora Gardens LLC to rent approximately 92,000 square feet of a 400,000 square foot building on July 1, 2014, to relocate Charleston County’s in-patient drug and alcohol treatment facility from the City of Charleston to the City of North Charleston. Chicora Gardens LLC purchased the property from the City of North Charleston, who purchased the property from the federal government at auction. Charleston County did not own the property; it did not sell it to Chicora Gardens LLC, and it did not buy it back for \$33 million dollars. Rather, Charleston County terminated the lease prior to its effective date because Chicora Gardens did not complete the improvements to make the leased space suitable for an in-patient drug and alcohol treatment facility. Chicora Gardens LLC filed bankruptcy and filed an adversary proceeding against Charleston County *inter alia* for breach of the lease. Charleston County settled the adversary case by paying all Chicora Gardens LLC’s creditors in full in the bankruptcy case, and the County took title to the property as part of the settlement. I wrote a memo to Charleston County Council dated July 1, 2014, marked “attorney/client privilege” which provided a summary and non-exhaustive list of issues regarding the lease.

As the County Attorney for Charleston County, my role involved reviewing the draft lease negotiated by Charleston County and Chicora Gardens LLC and advising Charleston County regarding its provisions, potential revisions, and risks. All communications I had with Charleston County Council are protected by the attorney-client privilege and the work product doctrine.

**b) Did you recommend that the County enter into the lease agreement to be an anchor tenant of the new development?**

My work, research, and communications with my client on this matter are protected under the attorney-client privilege and the work product doctrine.

- 2) In litigation, you defended Charleston County's voting system, which was struck down as a violation of the Voting Rights Act. The County had an at-large voting system in which council members were voted upon by the entire county, rather than by voters in specific districts. The Justice Department and other plaintiffs challenged this system, arguing that it diluted the strength of minority voters. A federal district court agreed, ruling that the system "denie[d] African-Americans, on account of their race and color, equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act." (*U.S. v. Charleston County* (2003)) The Fourth Circuit affirmed. In the appellant's brief before the Fourth Circuit, you are identified as the "Lead Counsel for Appellants." (*U.S. v. Charleston Cnty.*, 2003 WL 25599406 (4<sup>th</sup> Cir.))

**a) Even though you were on the losing side of this case, in retrospect do you think that this change has resulted in minority voters having more influence on the Charleston County Council?**

Charleston County's single member district election system has resulted in more minority members being elected to Charleston County Council.

- 3) Please respond with your views on the proper application of precedent by judges.

**a) When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

Never.

**b) Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

It is generally not appropriate for inferior court judges to criticize Supreme Court precedent, and if confirmed as a district judge, I would have little occasion to write a concurring or dissenting opinion.

**c) When, in your view, is it appropriate for a district court to overturn its own precedent?**

District court decisions are not precedential, although they can be persuasive. Federal Rules of Civil Procedure 59(e) and 60 provide standards for when a district court should set aside its prior rulings in a specific case. A district court should revisit its decisions when they conflict with a decision from a superior court.

**d) When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

It is only for the Supreme Court to decide when a precedent should no longer be followed, and the Court has recently and repeatedly articulated the factors it considers when determining whether stare decision requires adherence to precedent. *See, e.g., Ramos v. Louisiana*, 140 S.Ct. 1390, 1405 (2020) (considering “the quality of the decision’s reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision” (internal quotation marks omitted)). If confirmed, I would faithfully apply all Supreme Court precedent.

- 4) When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

**a) Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?**

All Supreme Court precedents are binding on lower courts, including *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny.

**b) Is it settled law?**

Please see my response to Question 4(a).

- 5) In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Like all Supreme Court precedent, *Obergefell* is settled law that is binding on lower courts, and if confirmed, I would apply it faithfully.

- 6) In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

**a) Do you agree with Justice Stevens? Why or why not?**

As a judicial nominee, it would not be appropriate for me to comment on the merits or demerits of any Supreme Court opinion. If confirmed, I would faithfully apply the Court's *Heller* opinion and its progeny.

**b) Did *Heller* leave room for common-sense gun regulation?**

The Supreme Court in *Heller* noted that the "right secured by the Second Amendment is not unlimited," and 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." *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008).

**c) Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

The justices in *Heller* disagreed on the implications of prior precedent. As a judicial nominee, it would be inappropriate for me to express agreement or disagreement with Supreme Court decisions; the role of a lower court judge is to follow Supreme Court precedent in deciding cases; and if confirmed, I would follow *Heller* and any Supreme Court or circuit precedent interpreting *Heller*.

- 7) In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a) Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

The Supreme Court has held that "First Amendment protection extends to corporations." *Citizens United v. FEC*, 558 U.S. 310, 342 (2010). If confirmed, I would faithfully apply that precedent.

**b) Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my response to Question 7(a).

**c) Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707-08 (2014), the Supreme

Court held that the Religious Freedom Restoration Act applies to closely-held corporations. That precedent is binding and, if confirmed, I would apply it. As a judicial nominee, it would not be appropriate to opine further on an issue that could be the subject of pending or impending litigation.

- 8) Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The Equal Protection Clause of the Fourteenth Amendment states that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Together, these constitutional provisions restrict the government from denying a person the equal protection of the laws and from prohibiting a person’s free exercise of religion. Both are fundamental, important rights protected by our Constitution, and I would faithfully apply all Supreme Court precedent governing the interplay of the two amendments.

- 9) Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk’s sincerely held religious beliefs?

The Supreme Court has long held that state laws prohibiting interracial marriage violate the Fourteenth Amendment. See *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Please also see my response to Question 8.

- 10) Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist’s sincerely held religious beliefs?

Please see my response to Question 9.

- 11) Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

No.

- 12) On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration’s interview process for judicial nominees. He said: “On the judicial piece ... one of the things we interview on is their views on administrative law. And what you’re seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years...”

- a) **Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

I do not recall being asked about my views related to administrative law.

- b) **Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

No.

- c) **What are your “views on administrative law”?**

As an inferior court nominee, my view is that all Supreme Court and Fourth Circuit precedent regarding administrative law is binding and I would faithfully apply it.

- 13) Do you believe that human activity is contributing to or causing climate change?

I am generally aware that literature exists which attributes climate change to human activity, but I have not studied any particular scientific reports. It is not appropriate for me to comment further, however, as this issue has been and will likely continue to arise in litigation and is part of a national political debate. *See* Canon 3(A)(6), Code of Conduct for United States Judges (“A judge should not make public comment on the merits of a matter pending or impending in any court.”); *Id.*, Canon 1 commentary (“The Code is designed to provide guidance to judges and nominees for judicial office.”).

- 14) When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has held that the text of a statute is the starting place for construing it and that it is appropriate to consider legislative history only when the statutory text is ambiguous. *See, e.g., Milner v. Dep’t of Navy*, 562 U.S. 562, 569, 572 (2011). If confirmed, I will follow all Supreme Court and Fourth Circuit precedent on the use of legislative history.

- 15) At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

- 16) Please describe with particularity the process by which you answered these questions.

I received these questions from the Office of Legal Policy and drafted my responses to the questions, reviewing any previous memos or litigation if the question referred to them. I then submitted my draft responses to the Office of Legal Policy, which made some recommended edits that I reviewed and then reverted the final versions to the Office of Legal Policy for submission. All answers are my own.



**Nomination of Joseph Dawson III  
to the United States District Court for the District of South Carolina  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

I had not reviewed the story or recording beforehand, but have done so now.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

The Canons of the Code of Conduct for United States Judges prohibit me from opining on political matters.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Please see my response to Question 1(b).

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

Please see my response to Question 1(b).

2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts' metaphor? Why or why not?

I agree to the extent that the metaphor intends to convey the limited role of the judiciary to say what the law is and how it applies to case or controversies before Article III courts.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

The practical consequences of a judicial decision matter when the law calls for them to play a role in the legal standard that the court applies. A good example is the standard for a preliminary injunction, which requires a court to consider, among other factors, whether the plaintiff "is likely to suffer irreparable harm in the absence of preliminary relief." *Winter v. Nat. Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008).

3. Federal Rule of Civil Procedure 56 provides that a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact" in a case. Do you agree that determining whether there is a "genuine dispute as to any material fact" in a case requires a trial judge to make a subjective determination?

No, the law governing Rule 56 motions requires the court to apply an objective standard.

4. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance "to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old."

- a. What role, if any, should empathy play in a judge's decision-making process?

A federal judge must apply the law impartially to all litigants. However, a federal judge should be mindful of how he or she interacts with litigants and the public and should always be respectful of those who come before the court.

- b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

A federal judge must apply the law impartially to all litigants. However, a federal judge should be mindful of how he or she interacts with litigants and the public and should always be respectful of those who come before the court.

5. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

6. The Seventh Amendment ensures the right to a jury "in suits at common law."

- a. What role does the jury play in our constitutional system?

The jury plays a key role in our constitutional system as the finder of fact in many instances, both under the Seventh Amendment as well as the Sixth Amendment.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

The Supreme Court has interpreted the Federal Arbitration Act on many occasions, and I would faithfully apply all of the Court's precedents on arbitration clauses while taking into consideration all relevant constitutional provisions that bear on a particular litigant's claims.

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 6(b).

7. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The Supreme Court has instructed that courts "must review legislative 'factfinding under a deferential standard.'" *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2310 (2016). I would follow and faithfully apply all Supreme Court and Fourth Circuit precedent regarding legislative fact-finding.

8. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

- i. Determining whether the seminar or conference specifically targets judges or judicial employees.
- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.
- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.
- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.
- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

The independence of Article III courts is foundational to our constitutional structure. The Code of Conduct for United States Judges and Advisory Opinion #116 are designed to ensure that the judiciary remains independent and avoids appearances of impropriety or partiality. If confirmed, I will evaluate any invitation to participate in an educational seminar consistent with the factors outlined in that Advisory Opinion and take into account its admonition that each invitation should be assessed "on a case-by-case basis."

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to Question 8(b).

- 9. Earlier this year, the Federal Judiciary's Committee on the Codes of Conduct drafted a proposed advisory opinion concluding that a judge's ongoing "membership in . . . the Federalist Society is inconsistent with obligations imposed by the Code [of Conduct.]" After an aggressive lobbying campaign by Federalist Society-affiliated judges, the Committee ultimately voted to table the proposed opinion. In doing so, the Committee observed: "The nation depends on a judiciary that is impartial and independent. Consistent with the judge's oath, each individual judge should take care to make all membership decisions in a way that is consistent with the highest ideals of the profession as expressed in the Code of Conduct." (emphasis added.)

- a. If confirmed, do you plan to continue your membership in the Federalist Society?

I am not a member of the Federalist Society.

- b. In the draft of Advisory Opinion #117, the Committee concluded that official affiliation with ACS or the Federalist Society "could convey to a reasonable person that the affiliated judge endorses the views and particular ideological perspectives advocated by the organization; call into question the affiliated judge's impartiality on subjects as to which the organization has taken a position; and generally frustrates the public's trust in the integrity and independence of the judiciary."
  - i. Do you think the Federalist Society is an organization "that serves the interests generally of those who use the legal system, rather than the interest of any specific constituency"? Why or why not?
  - ii. Do you think the Federalist Society "is generally viewed by the public as having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations"? Why or why not?
  - iii. Do you believe that a judge's membership in the Federalist Society may reasonably be seen by the public as engendering indirect advocacy of the organization's political, social, or civic objectives? Why or why not?
  - iv. Do you believe that reasonable members of the public would perceive a judge who has membership in the Federalist Society, a self-described group of conservatives and libertarians, to be partial or impartial? Why?
  - v. The draft opinion notes "the Federalist Society's funding comes substantially from sources that support conservative political causes." Do you believe that membership in an organization tied to such funding could give rise to the appearance of impropriety or partiality? Why or why not?

Canon 4 of the Code of Conduct for United States Judges instructs that a "judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects." That same canon states that such participation should not "detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set

forth below.” Canon 5 of the Code forbids judges from joining or contributing to a “political organization,” but “does not prevent a judge from engaging in activities described in Canon 4.” I am not aware of any fact that would suggest that membership in the Federalist Society is not fully consistent with the Code of Conduct for United States Judges, including both Canon 4 and Canon 5.

**Nomination of Joseph Dawson III, to be United States District Court Judge for the District  
of South Carolina  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has evaluated whether a right is fundamental in a series of cases, including *Washington v. Glucksberg*, 521 U.S. 702 (1997), and its progeny. I would follow the Supreme Court's precedents as well as any applicable Fourth Circuit precedent, if confirmed.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes. The Supreme Court stated in *Glucksberg* that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. at 720-21 (internal citations omitted). I would faithfully apply that precedent.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of any court of appeals?

Yes. If the right has been recognized by the Supreme Court or the Fourth Circuit, I would faithfully apply that precedent. While not binding, I would also consider precedent from other courts of appeals.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has been recognized by any court of appeals?

Yes.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See*

*Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

The Supreme Court considered this factor in the cases you cited above, and I would apply those cases faithfully.

- f. What other factors would you consider?

I would consider the factors articulated by the Supreme Court in *Glucksberg* and its progeny, or any other Supreme Court or Fourth Circuit precedent.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court held in *United States v. Virginia*, 518 U.S. 515 (1996), that the Equal Protection Clause of the Fourteenth Amendment applies to both race and gender. If confirmed, this precedent would be binding on me and I would apply it faithfully.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my response to Question 2.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

Please see my response to Question 2.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that the Fourteenth Amendment protects the right of same-sex couples to marry "on the same terms accorded to couples of the opposite sex." *Id.* at 680. If confirmed, I would faithfully apply this precedent.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

This issue is the subject of pending or impending litigation and therefore, under the Code of Conduct for United States Judges, I cannot express an opinion. *See* Canon(A)(6).

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The Supreme Court has held that such a right exists. *See Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). If confirmed, I would faithfully apply that precedent.

- a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court has held that such a right exists. *See Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). If confirmed, I would faithfully apply that precedent.

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court held that such a right exists. *See Lawrence v. Texas*, 539 U.S. 558 (2003). If confirmed, I would faithfully apply that precedent.

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my above responses.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

- a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

The Supreme Court has instructed that societal changes can be relevant to a lower court's analysis in a variety of contexts. If confirmed, I will follow the Supreme Court's holdings on this issue, including *Obergefell* and *Virginia*.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?



Please see my response to Question 4(a). When a district court is sitting as the fact finder, scientific data might be relevant to support an element of a litigant's claim. In addition, scientific evidence and data can play an important role in trial evidence when the district court judge is acting as the gatekeeper for expert testimony. See Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has stated that "[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018).

- b. When is it appropriate to apply Justice Kennedy's formulation of substantive due process?

Please see my response to Question 5(a).

6. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

- a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

As a general rule it would be inappropriate for me to comment on Supreme Court precedent as a judicial nominee. See Code of Conduct for United States Judges, Canon 3(A)(6). However, I believe that *Brown v. Board of Education* was correctly decided and holds a unique place in American jurisprudence. If confirmed, I would follow *Brown* and all Supreme Court precedent. I have not analyzed this academic issue in great detail, but I am generally aware that some originalist scholars assert that *Brown*'s holding comports with the original meaning of the Fourteenth Amendment. See, e.g., Michael McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995).

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Nov. 25, 2020).

If confirmed, I would faithfully apply Supreme Court and Fourth Circuit precedent, including precedent defining the terms “freedom of speech,” “equal protection,” and “due process of law.”

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

The Supreme Court has looked to the text, structure, and history of a constitutional provision, including how the provision was originally understood, in interpreting it. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would follow all precedents from the Supreme Court and the Fourth Circuit.

- d. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my response to Question 6(c).

- e. What sources would you employ to discern the contours of a constitutional provision?

Please see my response to Question 6(c).

**Questions for the Record for Joseph Dawson, III**  
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I ask each nominee to answer the following two questions:
  - a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**  
 No.
  - b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**  
 No.
2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.
  - a. **Do you agree that training on implicit bias is important for judges to have?**  
 Yes.
  - b. **Have you ever taken such training?**  
 No.
  - c. **If confirmed, do you commit to taking training on implicit bias?**  
 If confirmed, I will participate in training opportunities offered to federal judges on implicit bias.
3. In 2003, you defended Charleston County's at-large voting system from a challenge by the Department of Justice that Charleston's at-large voting system diluted the minority vote in violation of section 2 of the Voting Rights Act. The district court granted summary judgment to the plaintiffs, finding the at-large voting system violated the Voting Rights Act – a decision that was affirmed by the appellate court.
  - a. **From 1970 until the court decision in this case in 2004, 41 people had been elected to the County council but only three of them were minorities. How many minorities now hold seats on the Charleston County Council?**  
 There are three African American members currently serving on Charleston County Council.

**b. Do you agree with the court's decision to strike down Charleston County's at-large voting system?**

As a judicial nominee, it would be inappropriate for me to comment on the court's decision to strike down Charleston County's at-large voting system. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply all Supreme Court and Fourth Circuit precedents.

4. You were County Attorney when Charleston was considering a redevelopment project of a vacant hospital site in 2012. The County eventually signed a 25-year lease to become the anchor tenant, despite knowing that Titan Atlas Global had been hired to renovate the property. Its predecessor company, Titan Atlas Manufacturing, run by Donald Trump, Jr. and Jeremy Blackburn, had left a trail of unpaid bills, litigation, and unpaid taxes in its wake. The redevelopment project failed and eventually the County paid \$33 million in order to settle the dispute.

**a. As County Attorney, what was your role while considering this project? Did you advocate for or make a recommendation to the County Council on this project?**

Charleston County entered a lease with Chicora Gardens LLC to rent approximately 92,000 square feet of a 400,000 square foot building on July 1, 2014, to relocate Charleston County's in-patient drug and alcohol treatment facility from the City of Charleston to the City of North Charleston. Chicora Gardens LLC purchased the property from the City of North Charleston, who purchased the property from the federal government at auction. Charleston County terminated the lease prior to its effective date because Chicora Gardens did not complete the improvements to make the leased space suitable for an in-patient drug and alcohol treatment facility. Chicora Gardens LLC filed bankruptcy and filed an adversary proceeding against Charleston County *inter alia* for breach of the lease. Charleston County settled the adversary case by paying all Chicora Gardens LLC's creditors in full in the bankruptcy case, and the County took title to the property as part of the settlement. I wrote a memo to Charleston County Council dated July 1, 2014, marked "attorney/client privilege" which provided a summary and non-exhaustive list of issues regarding the lease.

As the County Attorney for Charleston County, my role involved reviewing the draft lease negotiated by Charleston County and Chicora Gardens LLC and advising Charleston County regarding its provisions, potential revisions, and risks.

**b. Looking back on the situation, are there circumstances you should have seen or considered that would have altered your judgment as the County Attorney advising the County Council about the deal?**

There are always circumstances you can see or consider with hindsight. However, as the attorney for Charleston County on this transaction, my job was to advise Charleston County regarding the potential risks of a twenty-five-year lease, not to make the business decisions regarding the same.

**Nomination of Joseph Dawson, III  
United States District Court for the District of South Carolina  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. In 2012, the County of Charleston was involved in a redevelopment project to transform a vacant hospital building.<sup>1</sup> As part of that effort, the County sold the land the hospital sat on for \$5 million to Chicora Gardens LLC. Notably, Donald Trump, Jr. was one of the principals of Chicora Gardens. You wrote a memo to the County Council regarding the proposed sale. Unfortunately, in 2014, the redevelopment project fell apart, which resulted in the County having to buy back the property for \$33 million.

- a. What role did you play in the redevelopment project?

Charleston County entered a lease with Chicora Gardens LLC to rent approximately 92,000 square feet of a 400,000 square foot building on July 1, 2014, to relocate Charleston County's in-patient drug and alcohol treatment facility from the City of Charleston to the City of North Charleston. Chicora Gardens LLC purchased the property from the City of North Charleston, who purchased the property from the federal government at auction. Charleston County did not own the property; it did not sell it to Chicora Gardens LLC, and it did not buy it back for \$33 million dollars. Rather, Charleston County terminated the lease prior to its effective date because Chicora Gardens did not complete the improvements to make the leased space suitable for an in-patient drug and alcohol treatment facility. Chicora Gardens LLC filed bankruptcy and filed an adversary proceeding against Charleston County *inter alia* for breach of the lease. Charleston County settled the adversary case by paying all Chicora Gardens LLC's creditors in full in the bankruptcy case, and the County took title to the property as part of the settlement. I wrote a memo to Charleston County Council dated July 1, 2014, marked "attorney/client privilege" which provided a summary and non-exhaustive list of issues regarding the lease.

As the County Attorney for Charleston County, my role involved reviewing the draft lease negotiated by Charleston County and Chicora Gardens LLC and advising Charleston County regarding its provisions, potential revisions, and risks.

- b. Did you view Donald Trump, Jr.'s role in the project as a potential liability or selling point?

I was not involved in the development of the proposal or its presentation to Charleston County. Therefore, I had no view of his role. My July 1, 2014, memo to Charleston County Council, listed the principals of Chicora Gardens LLC.

- c. Did your memo to the County Council detail any financial irregularities or concerns

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<sup>1</sup> David Blade, "Donald Trump Jr., the Former Charleston Naval Hospital, and a Settlement Costing County Taxpayers \$33 Million: How N. Charleston's Trump Jr. Deal Unraveled," THE POST AND COURIER (Oct. 16, 2017).

related to Chicora Gardens and its principals? If not, please explain why.

The purpose of my July 1, 2014, memo to Charleston County Council was a summary and non-exhaustive list of issues regarding the lease. All communications I had with Charleston County Council are protected by the attorney-client privilege and the work product doctrine.

2. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

My understanding of originalism is that a constitutional or statutory provision should be interpreted according to the plain text giving the words their original public meaning at the time the Constitution was framed, the Amendment enacted, or the statute passed. Although I prefer not to label my judicial philosophy having never served as a judge, the Supreme Court has provided guidance for how lower courts should approach matters of statutory or constitutional interpretation. I will fully and faithfully apply all Supreme Court and Fourth Circuit precedent.

3. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

My understanding of textualism is that in constitutional or statutory interpretation the text is paramount, and the Constitution or statutory provisions should be interpreted according to the plain text. Although I prefer not to label my judicial philosophy having never served as a judge, the Supreme Court has provided guidance for how lower courts should approach matters of statutory or constitutional interpretation. I will fully and faithfully apply all Supreme Court and Fourth Circuit precedent.

4. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

Yes. If confirmed, I will follow United States Supreme Court and Fourth Circuit precedents to determine the meaning of statutes. The United States Supreme Court has instructed that the use of legislative history is appropriate to assist in statutory interpretation when the statute is ambiguous. *See Exxon Mobil Corp. v. Allapattach Servs., Inc.* 545 U.S. 546, 568 (2005).

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my response to 4(a).

5. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes, I believe judicial restraint is an important value for appellate and district judges to follow. I understand that judicial restraint is when a judge resolves cases by applying the law as written and follows binding precedent without interjecting personal views or policy preferences into the decision-making process.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>2</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Heller*. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Heller* and all other Supreme Court and Fourth Circuit precedents.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>3</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Citizens United v. FEC*. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Citizens United v. FEC* and all other Supreme Court and Fourth Circuit precedents.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>4</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Shelby County v. Holder*. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Shelby County v. Holder* and all other Supreme Court and Fourth Circuit precedents.

6. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>5</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>6</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American

<sup>2</sup> 554 U.S. 570 (2008).

<sup>3</sup> 558 U.S. 310 (2010).

<sup>4</sup> 570 U.S. 529 (2013).

<sup>5</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>6</sup> *Id.*

elections?

I understand that cases involving alleged voter fraud are and could be litigated in federal court; and therefore, it would be inappropriate as a judicial nominee for me to comment. *See* Code of Conduct for United States Judges, Canon 3(A)(6) (“A judge should not make any public comment on the merits of a matter pending or impending in any court.”)

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to 6(a).

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to 6(a).

7. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>7</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>8</sup> These shocking statistics are reflected in our nation’s prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>9</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>10</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

Yes.

- b. Do you believe people of color are disproportionately represented in our nation’s jails and prisons?

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I have not studied the issue of implicit racial bias in our criminal justice system.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an

<sup>7</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>8</sup> *Id.*

<sup>9</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>10</sup> *Id.*



average of 19.1 percent longer.<sup>11</sup> Why do you think that is the case?

I believe disparities in sentencing for similarly situated defendants who commit the same crimes are a great injustice. It would not be appropriate for me to speculate as to possible causes for the statistics that you reference, but I can commit that, if confirmed as a federal district court judge, I will endeavor to ensure that similarly situated defendants who commit the same crimes receive proportional sentences irrespective of their race.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>12</sup> Why do you think that is the case?

Please see my response to Question 7(d).

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Federal district court judges should take seriously their task of calculating the Sentencing Guidelines and carefully evaluate their reasons for granting downward departures or variances. I think being sensitive to and conscientious of the reasons for those departures and variances is one measure that federal judges could take to ensure that impermissible considerations are not used to impose differing sentences on similarly situated defendants.

- 8. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>13</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>14</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I am not familiar with the fact sheet you cite in your question and cannot provide an opinion on the issue.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

<sup>11</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>12</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>13</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>14</sup> *Id.*

Please see my response to 8(a).

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

10. Do you believe that *Brown v. Board of Education*<sup>15</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Although the general rule is that a nominee should not opine on the correctness of a United States Supreme Court case, Canons 2(A) and 3(A)(6) of the Code of Conduct for United States Judges, *Brown v. Board of Education* warrants a deviation from the general rule given its historical significance. *Brown*, which corrected a grave injustice caused by *Plessy v. Ferguson*, was correctly decided.

11. Do you believe that *Plessy v. Ferguson*<sup>16</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. The United States Supreme Court overturned *Plessy v. Ferguson* in *Brown v. Board of Education*.

12. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict" in presiding over civil fraud lawsuits against Trump University because he was "of Mexican heritage."<sup>17</sup> Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

My understanding is that recusal determinations are made by the presiding judge on a case-by-case basis and governed by 28 U.S.C. § 455 and the Code of Conduct for United States Judges. As a judicial nominee, it would be inappropriate for me to comment on matters that are the subject of political debate or any issues that could be pending or impending in litigation. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5.

14. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases,

<sup>15</sup> 347 U.S. 483 (1954).

<sup>16</sup> 163 U.S. 537 (1896).

<sup>17</sup> Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict'*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

bring them back from where they came.”<sup>18</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) held that “once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. If confirmed, I will fully and faithfully apply all Supreme Court and Fourth Circuit precedent.

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<sup>18</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Thomas Lee Kirsch II

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

Circuit Judge, United States Court of Appeals for the Seventh Circuit

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

United States Attorney's Office  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320

Residence: Schererville, Indiana

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

1974; Hammond, Indiana

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

Harvard Law School, J.D., 1999

Indiana University, B.A., 1996

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

2017 – present  
United States Attorney's Office

Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
United States Attorney

2008 – 2017  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
Partner

2001 – 2008  
United States Attorney's Office  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
Assistant United States Attorney

2006 – 2007  
United States Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Counsel to the Assistant Attorney General  
On detail from the United States Attorney's Office for the Northern District of Indiana

2000 – 2001  
Honorable John Daniel Tinder  
United States District Judge  
Birch Bayh Federal Building & U.S. Courthouse  
46 East Ohio Street  
Indianapolis, Indiana 46205  
Judicial Law Clerk

1999 – 2000  
Jenner & Block  
353 North Clark Street  
Chicago, Illinois 60654  
Associate

Summer 1998  
Jenner & Block  
353 North Clark Street  
Chicago, Illinois 60654  
Summer Associate

Summer 1998  
McDermott, Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606  
Summer Associate

Summer 1997  
Jenner & Block  
353 North Clark Street  
Chicago, Illinois 60654  
Summer Associate

Summer 1996  
Lake County Indiana Prosecutor's Office  
2293 North Main Street  
Crown Point, Indiana 46307  
Summer Intern

Other Affiliations (uncompensated)

2016 – 2017  
Munster Medical Research Foundation  
d/b/a Community Hospital  
901 Macarthur Boulevard  
Munster, Indiana 46321  
Board Member

2010 – 2017  
Northwestern University School of Law  
375 East Chicago Avenue  
Chicago, Illinois 60611  
Adjunct Professor of Law in Trial Advocacy

2009 – 2017  
Campagna Academy, Inc.  
7403 Cline Avenue  
Schererville, Indiana 46375  
Board Member

2010 – 2015  
Lake Area United Way  
221 West Ridge Road  
Griffith, Indiana 46319  
Board Member

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

I have not served in the U.S. Military. I registered for the selective service upon turning 18.

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

*Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys* Litigation Star and Future Star (2013 – 2016)

*The National Law Journal*, Chicago Rising Star (2013)

*The American Lawyer*, Litigator of the Week (2012)

*Law360*, Rising Star (2011 – 2013)

*Legal 500*, U.S. Directory listed and recommended (2009)

*Chicago Law Bulletin Publishing Company* 40 Illinois Attorneys Under Forty to Watch (2009)

*NWI Times InBusiness Magazine* Top 20 Business People Under 40 (2008)

Performance awards from the FBI, IRS, and United States Attorney (various dates from 2002 – 2008)

Department of Justice Director's Award for Superior Performance (2005)

Herman Wells Award for Outstanding Achievement at Indiana University (1996)

Stadelman Award for most outstanding student in Economics (1996)

William Jennings Bryan Award for most outstanding Honors thesis in Political Science (1996)

Moffat Honors Thesis Award for most outstanding Honors thesis in Economics (1996)

Carroll Christenson Award for ability to apply economic theory to real world issues (1996)

Wendell L. Wilkie Award for outstanding achievement in Political Science (1996)

Bachelor's Degree with Highest Distinction (1996)

Bachelor's Degree in Economics with Honors (1996)

Bachelor's Degree in Political Science with Honors (1996)

Phi Beta Kappa Society (approximately 1995)

Golden Key International Honour Society (approximately 1995)

Blue Key National Honors Society (approximately 1995)

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

American College of Trial Lawyers, Fellow (2017 – present)

Chicago Inn of Court (approximately 2012 – 2017)

Magistrate Judge Merit Selection Panels for the Northern District of Indiana (2015 and 2016)

Seventh Circuit Bar Association (approximately 2013 – 2014)

Local Rules Advisory Committee for the Northern District of Indiana (2010 – 2013)

Lake County Indiana Bar Association (approximately 2001 – 2006)

Indiana State Bar Association (1999 – unknown; I am no longer a member.)

Illinois State Bar Association (1999 – unknown; I am no longer a member.)

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.

Indiana, 1999

Illinois, 1999

There have been no lapses in membership. I took voluntary inactive status in Illinois while serving as United States Attorney and while serving as an Assistant United States Attorney in Indiana.

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

U.S. Court of Appeals for the Third Circuit (2008)



U.S. Court of Appeals for the Seventh Circuit (2001)  
 U.S. Court of Appeals for the Tenth Circuit (2012)  
 U.S. District Court for the District of Colorado (2010)  
 U.S. District Court for the Central District of Illinois (2012)  
 U.S. District Court for the Northern District of Illinois (1999)  
 U.S. District Court for the Northern District of Illinois Trial Bar (2008)  
 U.S. District Court for the Northern District of Indiana (1999)  
 U.S. District Court for the Southern District of Indiana (1999)  
 U.S. District Court for the Eastern District of Michigan (2015)  
 U.S. District Court for the Eastern District of Wisconsin (2011)

I am not aware of any lapses in membership.

11. **Memberships:**

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

Pottawattomie Country Club (2020 – present)

Briar Ridge Property Owners Association (2008 – present)

Briar Ridge County Club (2004 – present)

Federalist Society for Law and Public Policy Studies (2006 – 2007)

Indiana University Alumni Association (1996 – present)

Indiana University Varsity Club (1996 – present)

Munster Medical Research Foundation Board of Directors (2016 – 2017)

Campagna Academy, Inc. Board of Directors (2009 – 2017)

Lake Area United Way Board of Trustees (2010 – 2015)

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, 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.

*Prosecution of Individuals in Corporate Criminal Investigations*, 66 DOJ J. Fed. L. & Prac., Oct. 2018, at 3. Copy supplied.

With Kristofer Swanson and Ryan M. Dunigan, *Data Breaches in a Whistleblower's World: What You Should Know, Why You Should Know It*, 21 A.B.A. Crim. Just. Section Newsl., Spring 2013, at 7. Copy supplied.

*Demonstrative Aids Help Explain Trial Evidence*, Chi. Daily L. Bull., Sept. 26, 2011. Copy supplied.

*No Rubber Stamp: Preparing for Heightened Scrutiny of Settlement Agreements with Government Entities*, Investigations Q., Winter 2011, at 10. Copy supplied.

*Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers*, 7 Wm. & Mary J. Women & L. 383 (2001). Copy supplied.

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

To the best of my knowledge, I have not prepared any such material.

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.

To the best of my knowledge, I have not issued or provided any such information.

As United States Attorney, my office regularly issues press releases about newsworthy cases and matters. Those press releases are listed in my response to question 12.e.

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

To the best of my recollection and through searches of my records and publicly available databases, I have found the following responsive materials.

As United States Attorney, I regularly speak about the work of my office, my career, law enforcement matters, my career, and public service. Sometimes, I speak from notes, outlines, or prepared texts, which may not be delivered verbatim. Sometimes, I do not use notes or prepared texts. At many events, I took questions from the audience. I have provided materials if I have them, as noted below. I have also provided media reports of my speeches where I was able to locate them.

September 18, 2020: Panelist, Indiana Prosecuting Attorneys Council Board Meeting, Indianapolis, Indiana. Notes supplied.

September 17, 2020: Panelist, Hot Trends in DOJ and SEC Enforcement and Litigation Conference. Virtual CLE event. Prepared questions by moderators supplied.

February 25, 2020: Remarks, U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, St. John Police Department, St. John, Indiana. I gave brief remarks to thank federal firearms licensees from Lake and Porter Counties, Indiana, for participating in training on federal laws and regulations. I have no notes, transcript, or recording. The address of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives is 99 New York Avenue NW, Washington, D.C. 20226.

February 24, 2020: Speaker, "Choosing Law" Lecture and Q&A session, Indiana University Prelaw Center, Bloomington, Indiana. Notes supplied.

February 24, 2020: Speaker, Discussion with students interested in serving in the Department of Justice, Indiana University Mauer School of Law, Bloomington, Indiana. Notes supplied.

February 20, 2020: Speaker, "Combating Anti-Semitism," Jewish Federation of Northwest Indiana, Munster, Indiana. I spoke about Department of Justice and my office's efforts to protect places of worship, with emphasis on religious groups that had been subject to discrimination. This was a discussion with members of the Federation and was largely a question and answer session. I have no notes, transcript, or recording. The

address of the Jewish Federation of Northwest Indiana is 585 Progress Avenue, Munster, Indiana 46321.

December 12, 2019: Speaker, Northwest Indiana Information Sharing and Security Alliance, Cyber Security Awareness Symposium, Schererville, Indiana. Remarks supplied.

November 7, 2019: Panelist, FBI Corporate Counsel Forum, Indianapolis, Indiana. Email outline of topics addressed supplied.

November 6, 2019: Speaker, Munster Lions Club, Munster, Indiana. Notes supplied.

October 10, 2019: Speaker, "White Collar Criminal Law," Northwestern University Kellogg Graduate School of Management, Evanston, Illinois. Notes supplied.

September 4, 2019: Speaker, Annual Fall Law Enforcement Conference, Indianapolis, Indiana. Remarks supplied.

August 19, 2019: Speaker, Internal Revenue Service Chicago Field Office, 100 Years of Criminal Investigation, Chicago, Illinois. Outline supplied.

August 16, 2019: Speaker, Protecting Places of Worship Forum, United States Department of Justice Community Relations Service, Hammond, Indiana. Remarks supplied.

May 31, 2019: Speaker, Protecting Places of Worship Forum, Fort Wayne Police Training Center, Fort Wayne, Indiana. Remarks supplied.

April 4, 2019: Keynote Address, Shared Ethics Advisory Commission Annual Ethics Summit, Schererville, Indiana. Speech and media report supplied.

January 9, 2019: Speaker, Hammond Optimist Club, Hammond, Indiana. Outline supplied.

December 3, 2018: Panelist, Indiana Prosecuting Attorneys Council Winter Conference, Indianapolis, Indiana. Presentation supplied.

November 30, 2018: Speaker, Northwest Indiana Information Sharing and Security Alliance, Cyber Security Awareness Symposium, Schererville, Indiana. Speech supplied.

November 13, 2018: Panelist, 2018 FBI Indianapolis Citizens Academy Alumni Association Fall Reception, Indianapolis, Indiana. The panel largely answered questions for the audience, which consisted of graduates of the FBI Citizens Academy. I have no notes, transcript, or recording. The address of the FBI Citizens Academy Alumni Association is Post Office Box 44, Birmingham, Alabama 35202.

September 5, 2018: Speaker, Annual Fall Law Enforcement Conference, Indianapolis, Indiana. Remarks supplied.

June 14, 2018: Introductory Remarks, Attorney General Jeff Sessions Speech on Immigration, Fort Wayne, Indiana. Remarks supplied.

May 25, 2018: Speaker, 16-Plus Group of Northwest Indiana Government Officials, Schererville, Indiana. Outline supplied.

May 17, 2018: Speaker, Munster Police Week Law Enforcement Memorial, Munster, Indiana. Remarks supplied.

May 11, 2018: Keynote Address, 19th Annual LaPorte County Peace Officer Memorial Service, Michigan City, Indiana. Remarks supplied.

April 20, 2018: Panelist, "NCAA Bribery Cases: The Latest in the Expanding Baltic/Bering Criminalization of Private Controversies Through the Federal Fraud Statutes?," 67th Annual Meeting, Seventh Circuit Bar Association and Judicial Conference of the Seventh Circuit, Chicago, Illinois. Outline supplied.

April 20, 2018: Speaker, District 1 Law Enforcement Council, Hobart Police Department, Merrillville, Indiana. I gave a brief address to the District 1 Law Enforcement Council regarding cooperation between federal, state, and local law enforcement in criminal enforcement. I have no notes, transcript, or recording. The address of the Hobart Police Department is 705 East 4th Street, Hobart, Indiana 46342.

March 19, 2018: Panelist, No More Secrets Campaign, Human Trafficking and Internet Safety Amongst Children, Hammond, Indiana. I answered questions from the audience regarding child exploitation. Notes supplied.

February 6, 2018: Speaker, Northwest Indiana Major Crimes Task Force, Chicago, Illinois. I gave brief remarks regarding cooperation between federal, state, and local law enforcement in criminal enforcement. I have no notes, transcript, or recording. The Northwest Indiana Major Crimes Task Force can be reached care of [dhein@townofdye.com](mailto:dhein@townofdye.com).

January 11, 2018: Speaker, Investiture as United States Attorney, United States Courthouse, Hammond, Indiana. Speech supplied.

December 7, 2017: Speaker, Northwest Indiana Information Sharing and Security Alliance, Cyber Security Awareness Symposium, Schererville, Indiana. Notes supplied.

December 6, 2017: Speaker, Lake County Bar Association, Criminal Defense Section, Crown Point, Indiana. Notes supplied.

November 15, 2017: Introductory Remarks, The Bullet Proof Mind Workshop, Indiana Dunes National Lakeshore and Valparaiso University Police, Valparaiso University, Valparaiso, Indiana. This was a one day training workshop for federal, state, and local law enforcement agents throughout Indiana on dealing with the stress related to violent situations. I have no notes, transcript, or recording. The address of Valparaiso University is 1700 Chapel Dr., Valparaiso, Indiana 46383.

October 17, 2017: Speaker, Highland Police Department. I provided brief introductory remarks concerning identifying theft training for federal and local law enforcement officers conducted by the U.S. Postal Inspection Service. I have no notes, transcript, or recording. The address for the Highland Police Department is 3333 Ridge Road, Highland, Indiana, 46322.

October 11, 2017: Speaker, Address to the Crown Point Rotary Club, Crown Point, Indiana. Notes and media reports supplied. Video clip and media report at: <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-crown-point-kirsch-st-1012-20171011-story.html>.

September 7, 2016, Speaker: Parallel Proceedings: Overlapping Government Criminal and Civil Investigations and Litigation, Chicago, Illinois. Notes supplied.

April 19, 2017: Panelist, "Government Agency Interaction," Law Bulletin Seminars 10th Annual White Collar Crime + Corporate Governance Conference, Chicago, Illinois. I participated in a panel presentation that addressed agency interaction in government investigations and litigation and the how such interaction affected government enforcement policies and priorities. I have no notes, transcript, or recording. The address of Law Bulletin Media is 415 North State Street, Chicago, Illinois 60654.

April 13, 2016: Panelist, "Foreign Corruption 2016: Response from the Trenches," Law Bulletin Seminars 9th Annual White Collar Crime + Corporate Governance Conference, Chicago, Illinois. I participated in a panel discussion on the FCPA Enforcement Plan and Guidance (or FCPA pilot program) and the implications of the policy initiatives announced by the Deputy Attorney General. I have no notes, transcript, or recording. The address of Law Bulletin Media is 415 North State Street, Chicago, Illinois 60654.

May 12, 2014: Moderator, "Can They Do That? The NSA, Privacy and the Fourth Amendment," 63rd Annual 7th Circuit Judicial Conference, Chicago, Illinois. I moderated a panel discussion on the Fourth Amendment implications of various surveillance programs and technological advances. I have no notes, transcript, or recording. The address of the 7th Circuit Judicial Conference is 53 West Jackson Boulevard, Suite 1050, Chicago, Illinois 60604.

April 18, 2013: Panelist, "PwC's Annual Securities Litigation & Enforcement Update," Chicago, Illinois. I participated in a panel discussion on recent SEC enforcement trends and litigation tactics. I have no notes, transcript, or recording. The address of

PricewaterhouseCoopers LLP in Chicago is 1 North Wacker Drive, Chicago, Illinois 60606.

April 16, 2013: Panelist, "DOJ Prosecution: How far has the pendulum swung?," Law Bulletin Seminars Annual White Collar Crime + Corporate Governance Conference, Chicago, Illinois. I participated in a panel that discussed recent fraud prosecutions brought by the Department of Justice Fraud Section. I have no notes, transcript, or recording. The address of Law Bulletin Media is 415 North State Street, Chicago, Illinois 60654.

November 28, 2012: Panelist, "Trial by Jury 2012: Mastering the Art of Cross-Examination," Practising Law Institute, New York, New York. I participated in a panel discussion on the art of cross-examining adverse witnesses. This panel was part of an advanced trial skills workshop. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 6th Avenue, New York, New York 10036.

November 13, 2012: Panelist, "Securities Litigation in 2012 and Beyond," Association of Corporate Counsel – Southern California Chapter, Los Angeles, California. I participated in a panel presentation on parallel proceedings in securities litigation. I have no notes, transcript, or recording. The address of the Association of Corporate Counsel is 1001 G Street, NW, Suite 300W, Washington, D.C. 20001.

May 3, 2011: Speaker, "Parallel Proceeding: Overlapping Government Civil Investigations/Litigation, Criminal Investigations, and Private Party Litigation," Alvarez & Marsal Dispute Analysis & Forensic Services, LLC, St. Charles, Illinois. PowerPoint supplied.

April 12, 2011: Panelist, "Parallel Proceedings," Law Bulletin Seminars Annual White Collar Crime + Corporate Governance Conference Chicago, Illinois. I participated in a panel presentation on parallel government investigation and enforcement proceedings. I have no notes, transcript, or recording. The address of Law Bulletin Media is 415 North State Street, Chicago, Illinois 60654.

September 16, 2010: Speaker, "Internal Investigations," Biomet, Inc., Winston & Strawn LLP, Chicago, Illinois. PowerPoint supplied.

March 10, 2010: Speaker, "Rehabilitation Versus Liquidation: Optimizing Recoveries in a Changing Cycle," Chicago, Illinois. I was part of a panel presentation made to Ernst & Young employees. I have no notes, transcript, or recording. The address of Ernst & Young is 155 North Wacker Drive, Chicago, Illinois 60606.

February 25, 2010 (approximate): Speaker, "Ethics Scenarios Exploring the Conflicts Inherent within Internal Investigations," Indiana State Bar Association Health Law Symposium, Indianapolis, Indiana. PowerPoint supplied.

November 17, 2009: Speaker, "Preparing for the Rebound: The Forecast for Complex Litigation and Government Enforcement," Association of Corporate Counsel, Southern California Chapter, Los Angeles, California. I participated in a panel presentation that discussed the forecast for government enforcement priorities in the new administration. I have no notes, transcript, or recording. The address of the Association of Corporate Counsel is 1001 G Street, NW, Suite 300W, Washington, D.C. 20001.

May 15, 2008: Speaker, "McNulty Memorandum on Prosecution of Business Organizations," McDonald's Corporation, Oakbrook, Illinois. PowerPoint supplied.

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

As United States Attorney, I hold press conferences, give interviews, and my office issues press releases on a regular basis. I have listed all that I have been able to identify to be best of my recollection and through searches of my records and publicly available databases.

#### Press Conferences

*Virtual press conference to discuss stimulus checks, scams and fraud related to COVID-19 with IRS Special Agent in Charge Kathy Enstrom and FBI Assistant Special Agent in Charge Danny Youmara*, United States Attorney's Office, April 28, 2020. Notes supplied. Press report at: [https://www.nwitimes.com/news/local/u-s-attorney-says-public-safety-concerns-trump-inmates-covid-19-fears/article\\_4b071344-3566-5898-8fd6-7fe4ff0ee8af.html](https://www.nwitimes.com/news/local/u-s-attorney-says-public-safety-concerns-trump-inmates-covid-19-fears/article_4b071344-3566-5898-8fd6-7fe4ff0ee8af.html).

*Announcement of Numerous Project Guardian Indictments*, United States Attorney's Office for the Northern District of Indiana, November 26, 2019. Notes supplied.

*Announcement of United States v. Ralph Mendez, et al. Indictment (Latin Dragon Nation street gang)*, United States Attorney's Office for the Northern District of Indiana, June 21, 2019. Notes supplied.

*Announcement of Kidnapping Charge Against Jarod Johnson, Jaron Johnson, and Patricia Carrington*, United States Attorney's Office for the Northern District of Indiana, April 26, 2019. Recording available at: [https://www.youtube.com/watch?v=P9W9pAtn\\_uE](https://www.youtube.com/watch?v=P9W9pAtn_uE).

*Announcement of United States v. Eric Krieg Sentencing*, United States Attorney's Office for the Northern District of Indiana, April 4, 2019. Notes supplied. Recording available at: [https://www.nwitimes.com/news/local/press-statement-eric-krieg-sentencing-april-4-2019/video\\_2ad1db51-4e5a-5f51-a680-f770fd8d73ad.html](https://www.nwitimes.com/news/local/press-statement-eric-krieg-sentencing-april-4-2019/video_2ad1db51-4e5a-5f51-a680-f770fd8d73ad.html).



*Announcement of Several Indictments, including United States v. Jeremiah Farmer, et al. Indictment (Latin Kings street gang)*, United States Attorney's Office for the Northern District of Indiana, October 19, 2018. Notes supplied.

*Announcement of United States v. Bernard Graham and Blake King Charges*, United States Attorney's Office for the Northern District of Indiana, June 8, 2018. Notes supplied.

*Announcement of United States v. Eric Weiler Indictment*, LaPorte County Annex, April 16, 2018. Notes supplied.

*Announcement of United States v. Dr. Jay Joshi and United States v. Ivan Reyes, et al. (Latin Counts street gang) Indictments*, United States Attorney's Office for the Northern District of Indiana, January 23, 2018. Notes supplied. Recording available at: <https://www.facebook.com/WJOB.1230/videos/1700568366655455/>.

*Remarks on United States v. John Buncich Sentencing*, United States Courthouse, Hammond, Indiana, January 16, 2018. Media supplied.

*Announcement of United States v. Eric Krieg Indictment*, United States Attorney's Office for the Northern District of Indiana, October 12, 2017. Notes supplied.

#### Press Releases

Press releases issued by the United States Attorney's Office for the Northern District of Indiana are maintained at the Office's website: <https://www.justice.gov/usao-ndin/pr>.

Except as otherwise indicated, press reports of statements I have made as U.S. Attorney were taken from these press releases.

*Ohio Man Sentenced to 70 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 21, 2020.

*South Bend Man Sentenced to 60 Months in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 21, 2020.

*Fort Wayne Man Sentenced to 188 Months in Prison for Possession with Intent to Distribute a Controlled Substance and Being a Felon in Possession of Firearms*, United States Attorney's Office for the Northern District of Indiana, October 20, 2020.

*U.S. Attorney Thomas L. Kirsch II Appoints Jacky Jacobs As a District Election Officer for the Northern District of Indiana*, United States Attorney's Office for the Northern District of Indiana, October 20, 2020.

*Hammond Man Charged with Credit Union Robbery*, United States Attorney's Office for the Northern District of Indiana, October 16, 2020.

*Angola Woman Sentenced to 200 Months in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 15, 2020.

*South Bend, Indiana Man Sentenced to 12 Years in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 15, 2020.

*Fort Wayne, Indiana Woman Ordered to Pay \$646,690.32 in Restitution After Pleading Guilty to Health Care Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, October 14, 2020.

*DOJ Charges More Than 14,200 Defendants with Firearms-Related Crimes in Fiscal Year 2020; Northern District of Indiana Charged 208 Defendants*, United States Attorney's Office for the Northern District of Indiana, October 13, 2020.

*Granger, Indiana Man Sentenced to 30 Years in Prison for Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, October 9, 2020.

*Niles, Michigan Man Sentenced to 71 Months in Prison for Transporting a Firearm in Interstate Commerce*, United States Attorney's Office for the Northern District of Indiana, October 9, 2020.

*North Judson, Indiana Man Sentenced to 14 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, October 8, 2020.

*Fort Wayne Man Sentenced to Over 10 Years in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 8, 2020.

*Fort Wayne Man Sentenced to 60 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, October 7, 2020.

*DOJ Charges 500 Plus Domestic Violence Firearm Related Cases in FY 2020; 13 Cases Charged Locally*, United States Attorney's Office for the Northern District of Indiana, October 7, 2020.

*Hammond Woman Ordered to Pay \$381,759 in Restitution*, United States Attorney's Office for the Northern District of Indiana, October 6, 2020.

*Michigan City Man Convicted Following 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, October 6, 2020.

*South Bend, Indiana Man Sentenced to 7 Years in Prison for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 2, 2020.

*Latin Dragon Nation Associate Sentenced to 60 Months in Prison Following Conviction for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, September 25, 2020.

*Repeat Sex Offender Sentenced to 25 Years in Prison for Second Child Pornography Conviction in 10 Years*, United States Attorney's Office for the Northern District of Indiana, September 23, 2020.

*Gary Man Charged with Mail Fraud and Attempted Bank Fraud for Diverting Approximately \$280,000 Away from a Senior Living Facility*, United States Attorney's Office for the Northern District of Indiana, September 23, 2020.

*South Bend, Indiana Man Sentenced to 60 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, September 21, 2020.

*South Bend, Indiana Man Sentenced to 60 Months in Prison for Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, September 21, 2020.

*U.S. Attorney Kirsch Reminds Parents About Online Predators with Recent Indictments*, United States Attorney's Office for the Northern District of Indiana, September 17, 2020.

*Operation Legend: Case of the Day; Indiana Man Charged with Federal Drug and Firearm Offenses*, United States Attorney's Office for the Northern District of Indiana, September 16, 2020. Copy supplied.

*Fort Wayne Man Sentenced to 121 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, September 16, 2020.

*Fort Wayne Man Sentenced to 10 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, September 16, 2020.

*Gary Man Sentenced to 120 Months in Prison for Conspiracy to Distribute Crack Cocaine*, United States Attorney's Office for the Northern District of Indiana, September 15, 2020.

*Latin King Gang Member Sentenced to 216 Months in Prison for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, September 14, 2020.

*Five Individuals Charged for Their Roles in Home Invasion Robbery*, United States Attorney's Office for the Northern District of Indiana, September 10, 2020.

*South Bend, Indiana Man Sentenced for Calling in a Bomb Threat to a South Bend FedEx Facility*, United States Attorney's Office for the Northern District of Indiana, September 10, 2020.

*Michigan City, Indiana Man Sentenced to 15 Years in Prison for Being a Felon in Possession of Firearms*, United States Attorney's Office for the Northern District of Indiana, September 9, 2020.

*Westville Woman Ordered to Pay \$708,971.93 in Restitution for Bank Fraud and Filing a False Tax Return*, United States Attorney's Office for the Northern District of Indiana, August 27, 2020.

*Multi-Defendant Indictment Returned for Firearm and Drug Offenses*, United States Attorney's Office for the Northern District of Indiana, August 27, 2020.

*South Bend, Indiana Man Sentenced to 57 Months in Prison for Mail Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, August 27, 2020.

*Whiting Mayor Charged with Wire and Tax Fraud and Enters into Agreement to Plead Guilty*, United States Attorney's Office for the Northern District of Indiana, August 27, 2020.

*Gary Man Pleads Guilty to Possessing Firearm in Furtherance of Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, August 18, 2020.

*Latin King Gang Member Sentenced to 87 Months in Prison for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, August 17, 2020.

*Settlement with Vohne Liche Kennels, Inc, for Submitting False Claims for Its Work for the U.S. Department of Defense's Tactical Explosive Detection Dogs Program, United States Attorney's Office for the Northern District of Indiana, August 14, 2020.*

*Man Indicted on Bank Robbery Charges, United States Attorney's Office for the Northern District of Indiana, August 13, 2020.*

*South Bend Man Sentenced to 70 Months in Prison for Distribution of Methamphetamine, United States Attorney's Office for the Northern District of Indiana, August 13, 2020.*

*Fort Wayne Man Sentenced to Over 21 Years in Prison, United States Attorney's Office for the Northern District of Indiana, August 7, 2020.*

*Fort Wayne Man Sentenced to 84 Months in Prison, United States Attorney's Office for the Northern District of Indiana, August 7, 2020.*

*Fort Wayne Man Sentenced to 150 Months in Prison, United States Attorney's Office for the Northern District of Indiana, August 7, 2020.*

*Fort Wayne Men Charged with Firearm Offenses, United States Attorney's Office for the Northern District of Indiana, August 6, 2020.*

*South Bend, Indiana Man Sentenced to 16 Years in Prison for Possession with Intent to Distribute Methamphetamine and Being a Felon in Possession of Firearms, United States Attorney's Office for the Northern District of Indiana, August 6, 2020.*

*Chicago Man Sentenced to 20 Years in Prison for Possession with Intent to Distribute Methamphetamine, United States Attorney's Office for the Northern District of Indiana, August 6, 2020.*

*Former Lake County Sheriff Re-Sentenced to 151 Months in Prison, United States Attorney's Office for the Northern District of Indiana, August 5, 2020.*

*Chicago Man Sentenced to 134 Months in Prison for Wire Fraud and Aggravated Identity Theft, United States Attorney's Office for the Northern District of Indiana, August 4, 2020.*

*Crown Point Man Sentenced to 60 Months Imprisonment for Distribution of Crack Cocaine, United States Attorney's Office for the Northern District of Indiana, July 30, 2020.*

*Gary Man Sentenced to 120 Months in Prison Transportation of Minor with Intent to Engage in Criminal Sexual Activity*, United States Attorney's Office for the Northern District of Indiana, July 28, 2020.

*Fort Wayne Man Charged with Drug and Firearms Offenses*, United States Attorney's Office for the Northern District of Indiana, July 24, 2020.

*Hammond Man Sentenced to 180 Months in Prison for Possessing a Firearm as a Felon*, United States Attorney's Office for the Northern District of Indiana, July 22, 2020.

*Cedar Lake Woman Indicted for Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, July 22, 2020.

*Latin Dragon Nation Member Sentenced to 17 Years in Prison Following Conviction for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, July 20, 2020.

*Lansing, Illinois Resident Ordered to Pay \$323,986.54 in Restitution*, United States Attorney's Office for the Northern District of Indiana, July 17, 2020.

*South Bend Man Sentenced to 100 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 17, 2020.

*Hammond Man Sentenced to 110 Months in Prison for Cocaine Distribution and Possessing a Firearm as a Felon*, United States Attorney's Office for the Northern District of Indiana, July 16, 2020.

*Fort Wayne Man Sentenced to 121 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, July 14, 2020.

*Michigan City Man Sentenced to 115 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 14, 2020.

*South Bend Man Sentenced to 57 Months in Prison for Hobbs Act Robbery and Attempted Hobbs Act Robbery*, United States Attorney's Office for the Northern District of Indiana, July 10, 2020.

*Merrillville Man Sentenced to 108 Months in Prison for Distribution of Heroin and Cocaine Base*, United States Attorney's Office for the Northern District of Indiana, July 10, 2020.

*Recent Indiana Federal Prosecutions Serve as Reminder to File and Pay Your Taxes Accurately by July 15 and Remain Vigilant in Scams*, United States Attorney's Office for the Northern District of Indiana, July 10, 2020.

*Hammond Man Sentenced to 51 Months in Prison for Possession of a Firearm by a Felon and for Violating Conditions of Supervised Release*, United States Attorney's Office for the Northern District of Indiana, July 10, 2020.

*South Bend Man Sentenced to 10 Years in Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, July 10, 2020.

*Lake Station Man Sentenced to 14 Years in Prison for Distribution of Cocaine Base and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, July 8, 2020.

*California Man Sentenced to 54 Months in Prison for Interstate Transportation in Aid of Racketeering*, United States Attorney's Office for the Northern District of Indiana, July 8, 2020.

*South Bend Man Sentenced to Over 21 Years in Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, July 8, 2020.

*East Chicago Man Sentenced to 70 Months in Prison for Possessing a Firearm as a Felon*, United States Attorney's Office for the Northern District of Indiana, July 8, 2020.

*University Park, Illinois Man Sentenced to 153 Months Imprisonment for Assaulting a Federal Official and for Discharging a Firearm During a Robbery*, United States Attorney's Office for the Northern District of Indiana, July 7, 2020.

*South Bend Man Sentenced for Simple Assault of a Native American on Tribal Land*, United States Attorney's Office for the Northern District of Indiana, July 2, 2020.

*Hammond Man Sentenced to Prison for Bank Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, July 2, 2020.

*Matteson, Illinois Man Sentenced to 10 Years in Prison for Crack Cocaine Distribution and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, July 2, 2020.

*Former Wheeler High School Teacher Charged with Receiving Child Pornography*, United States Attorney's Office for the Northern District of Indiana, July 1, 2020.

*Goshen Man Sentenced to Over 15 Years in Prison for Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, June 25, 2020.

*Indiana State Police Receive Department of Justice Grants to Combat Illegal Manufacture and Distribution of Methamphetamine and Opioids*, United States Attorney's Office for the Northern District of Indiana, June 24, 2020.

*South Bend, Indiana Woman Sentenced for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, June 18, 2020.

*Merrillville Woman Indicted for Mail Fraud*, United States Attorney's Office for the Northern District of Indiana, June 18, 2020.

*Rome City, Indiana Man Sentenced to 120 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, June 16, 2020.

*Latin Dragon Nation Member Pleads Guilty to Racketeering Conspiracy Including Two Homicides*, United States Attorney's Office for the Northern District of Indiana, June 16, 2020.

*Bryant Love Sentenced to 96 Months in Prison for Distribution of Cocaine and Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, June 15, 2020.

*Department of Justice Observes the 15<sup>th</sup> Annual World Elder Abuse Awareness Day*, United States Attorney's Office for the Northern District of Indiana, June 15, 2020.

*Defendants Sentenced and Ordered to Pay \$993,644.46 in Restitution*, United States Attorney's Office for the Northern District of Indiana, June 12, 2020.

*South Bend, Indiana Man Sentenced for Conspiracy to Distribute More Than 50 Grams of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, June 11, 2020.

*South Bend, Indiana Man Sentenced for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, June 11, 2020.

*Goshen Man Charged in Investment Fraud Scheme*, United States Attorney's Office for the Northern District of Indiana, June 11, 2020.

*South Bend, Indiana Man Re-Sentenced to 43 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, June 10, 2020.



*Latin Dragon Nation Member Sentenced to 420 Months Imprisonment Following Conviction for Racketeering Conspiracy Including Hammond Murder*, United States Attorney's Office for the Northern District of Indiana, June 5, 2020.

*Man Charged with Murder in Aid of Racketeering*, United States Attorney's Office for the Northern District of Indiana, June 3, 2020.

*Illinois Man Sentenced to Over 17 Years in Prison for Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, June 2, 2020.

*Fort Wayne Man Charged in Criminal Complaint with Possessing a Firearm as a Felon and Possession of an Unregistered Machinegun*, United States Attorney's Office for the Northern District of Indiana, June 1, 2020.

*Man Charged in Criminal Complaint with Possessing a Firearm as a Felon*, United States Attorney's Office for the Northern District of Indiana, May 28, 2020.

*Man Charged in Criminal Complaint with Making False Statement to Purchase Firearms*, United States Attorney's Office for the Northern District of Indiana, May 28, 2020.

*Fort Wayne Man Sentenced to 188 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 28, 2020.

*Fort Wayne Man Sentenced to 92 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 27, 2020.

*Man Sentenced to 100 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 19, 2020.

*Fort Wayne Man and Woman Charged with a 2019 Christmas Eve Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, May 13, 2020.

*Fort Wayne Man Sentenced to Over 17 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, May 13, 2020.

*U.S. Attorney Thomas L. Kirsch II Recognizes Police Week*, United States Attorney's Office for the Northern District of Indiana, May 10, 2020.

*Man Charged in Criminal Complaint with Possessing Firearm as Convicted Felon*, United States Attorney's Office for the Northern District of Indiana, May 8, 2020.

*Fort Wayne Woman Sentenced to 70 Months for Distribution of Methamphetamine,* United States Attorney's Office for the Northern District of Indiana, May 7, 2020.

*Fort Wayne Man Sentenced to 92 Months in Prison for Hobbs Act Robbery and Armed Credit Union Robbery,* United States Attorney's Office for the Northern District of Indiana, May 7, 2020.

*Fort Wayne Man Charged with Being a Felon in Possession of a Firearm,* United States Attorney's Office for the Northern District of Indiana, May 7, 2020.

*DOJ Increases Efforts to Combat Sexual Harassment in Housing,* United States Attorney's Office for the Northern District of Indiana, May 1, 2020.

*Department of Justice Commemorates National Crime Victims' Rights Week,* United States Attorney's Office for the Northern District of Indiana, April 21, 2020.

*Bremen, Indiana Man Sentenced for Conspiracy to Sell and Dispose of One or More Firearms to an Unlawful User of Controlled Substances,* United States Attorney's Office for the Northern District of Indiana, April 16, 2020.

*Department of Justice Makes \$850 Million Available to Help Public Safety Agencies Address Covid-19 Pandemic; \$11,090,030 Available to the State of Indiana,* United States Attorney's Office for the Northern District of Indiana, April 1, 2020.

*Hamilton Woman Charged with Health Care Fraud and Aggravated Identity Theft,* United States Attorney's Office for the Northern District of Indiana, March 30, 2020.

*U.S. Attorney Urges the Public to Report Suspected COVID-19 Fraud,* United States Attorney's Office for the Northern District of Indiana, March 23, 2020.

*Statement from U.S. Attorney Thomas L. Kirsch II Regarding Covid-19 and Criminal Activity,* United States Attorney's Office for the Northern District of Indiana, March 19, 2020.

*Duo Convicted of Conspiracy to Distribute Crack Cocaine After Jury Trial,* United States Attorney's Office for the Northern District of Indiana, March 18, 2020.

*Michigan City, Indiana Man Sentenced to 15 Years in Prison for Felon in Possession of Firearms,* United States Attorney's Office for the Northern District of Indiana, March 13, 2020.

*South Bend, Indiana Woman Sentenced to 10 Years in Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, March 12, 2020.

*Fort Wayne Man Sentenced to 60 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, March 11, 2020.

*South Bend, Indiana Many Convicted by a Jury for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, March 10, 2020.

*Warsaw, Indiana Man Sentenced for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, March 10, 2020.

*Elkhart, Indiana Man Sentenced for Making Pipe Bombs*, United States Attorney's Office for the Northern District of Indiana, March 9, 2020.

*Ali Sultan Sentenced to 104 Months in Prison for Distributing Controlled Substances and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, March 6, 2020.

*Fort Wayne Man Sentenced to 10 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, March 4, 2020.

*Latin Dragon Nation Member Sentenced to 18 Years in Prison Following a Conviction for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 25, 2020.

*Latin Count Gang Member Charged with Murder, Racketeering Conspiracy, and Drug Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 21, 2020.

*Two Blight Elimination Program Indictments Unsealed*, United States Attorney's Office for the Northern District of Indiana, February 20, 2020.

*Two Gary Men Charged with Federal Murder Charges Stemming from Killing of Pizza Delivery Man*, United States Attorney's Office for the Northern District of Indiana, February 20, 2020.

*Fort Wayne Man Sentenced to 10 Years for Distribution of a Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, February 19, 2020.

*Fort Wayne Man Sentenced to 7 ½ Years for Distribution of a Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, February 19, 2020.

*Chicago Man Charged in Criminal Complaint with Robbery Affecting Interstate Commerce of Hammond Boost Mobile Store*, United States Attorney's Office for the Northern District of Indiana, February 14, 2020.

*South Bend, Indiana Man Sentenced to 130 Months in Prison for Methamphetamine Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 13, 2020.

*Fort Wayne Man Sentenced to 78 Months in Prison for Possession of a Firearm in Furtherance of Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, February 13, 2020.

*Fort Wayne Sentenced to 15 Years*, United States Attorney's Office for the Northern District of Indiana, February 12, 2020.

*South Bend Man Charged with Narcotics Conspiracy and Firearms Offenses*, United States Attorney's Office for the Northern District of Indiana, February 7, 2020.

*Mishawaka, Indiana Man Sentenced to 120 Months in Prison for Conspiracy to Distribute Methamphetamine and Heroin*, United States Attorney's Office for the Northern District of Indiana, February 5, 2020.

*South Bend, Indiana Woman Sentenced for Conspiracy to Distribute More Than One Kilogram in Heroin*, United States Attorney's Office for the Northern District of Indiana, February 5, 2020. Copy supplied.

*Man Sentenced to 114 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, January 31, 2020.

*Chicago, Illinois Man Sentenced to 20 Years in Prison for Conspiracy to Distribute More Than One Kilogram of Heroin*, United States Attorney's Office for the Northern District of Indiana, January 30, 2020.

*Bremen, Indiana Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, January 29, 2020.

*Fort Wayne Man Sentenced to Prison*, United States Attorney's Office for the Northern District of Indiana, January 27, 2020.

*Converse Man Sentenced to Prison and Ordered to Pay Over \$3 Million in Restitution for Wire Fraud and False Statement on Income Tax Return*, United States Attorney's Office for the Northern District of Indiana, January 27, 2020.

*Union Officials Plead Guilty to Violent Extortion*, United States Attorney's Office for the Northern District of Indiana, January 24, 2020.

*South Bend, Indiana Man Entered Plea of Guilty for Possession with Intent to Distribute Methamphetamine and Being a Felon in Possession of Firearms*, United States Attorney's Office for the Northern District of Indiana, January 24, 2020.

*Fort Wayne Man Found Guilty After Three-Day Trial*, United States Attorney's Office for the Northern District of Indiana, January 23, 2020.

*Gary Man Sentenced to 54 Months in Prison for Possessing Firearms as a Felon*, United States Attorney's Office for the Northern District of Indiana, January 23, 2020.

*Delvin Perkins Sentenced to 51 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, January 17, 2020.

*Latin King Gang Member Sentenced to 108 Months in Prison for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, January 16, 2020.

*Duo Charged in Criminal Complaint with Possession with Intent to Distribute Controlled Substances and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, January 16, 2020.

*Medicare Fraud Complaint Filed Against Physician, His Siblings, and a Home Health Agency They Owned and Operated for Filing False Claims*, United States Attorney's Office for the Northern District of Indiana, January 9, 2020.

*Chicago Man Sentenced to 87 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, January 3, 2020.

*South Bend, Indiana Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 20, 2019.

*U.S. Attorney's Office Collects \$4,754,430.93 in Civil and Criminal Actions in Fiscal Year 2019*, United States Attorney's Office for the Northern District of Indiana, December 19, 2019.

*New Haven Man Sentenced to Prison Following His Conviction After a 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, December 19, 2019.

*Gary, Indiana Man Sentenced to Prison for Possession of a Firearm by a Convicted Felon*, United States Attorney's Office for the Northern District of Indiana, December 19, 2019.

*St. John, Indiana Man Pleads Guilty to Securities Fraud*, United States Attorney's Office for the Northern District of Indiana, December 18, 2019.

*Plainfield Man Sentenced to 120 Months for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, December 16, 2019.

*South Bend, Indiana Man Sentenced to 34 Years in Prison for Possession with Intent to Distribute Methamphetamine, Armed Drug Trafficking, and Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 16, 2019.

*Justice Department Awards More Than \$333 Million to Fight Opioid Crisis; Over \$1.2 Million Will Support Efforts to Combat Drugs and Crime in the Northern District of Indiana*, United States Attorney's Office for the Northern District of Indiana, December 13, 2019.

*Former Convicted Felon Charged in Robbery Spree*, United States Attorney's Office for the Northern District of Indiana, December 13, 2019.

*Former South Bend Schools Basketball Coach Sentenced to 5 Years in Prison for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, December 13, 2019.

*Merrillville, Indiana Man Sentenced to 5 Years in Prison for Robbery with a Dangerous Weapon*, United States Attorney's Office for the Northern District of Indiana, December 4, 2019.

*Gary Woman Sentenced to 5 Years in Prison for Conspiracy to Distribute and Possession with Intent to Distribute Crack Cocaine*, United States Attorney's Office for the Northern District of Indiana, December 2, 2019.

*Former Indiana Resident Pleads Guilty to Concealing Terrorism Financing*, United States Attorney's Office for the Northern District of Indiana, November 26, 2019.

*Project Guardians Indictments*, United States Attorney's Office for the Northern District of Indiana, November 26, 2019.

*Trio Charged with Wire Fraud for Financial Crimes Against Their Employer*, United States Attorney's Office for the Northern District of Indiana, November 26, 2019.

*Gary Woman Indicted for Attempting to Obstruct Justice*, United States Attorney's Office for the Northern District of Indiana, November 26, 2019.

*South Bend, Indiana Man Sentenced for Possession with Intent to Distribute More Than 500 Grams of a Mixture or Substance Containing a Detectable Amount of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, November 25, 2019.

*Latin King Gang Member Sentenced to Life in Prison for Racketeering Conspiracy Including Murder of 16-Year Old Boy and Drug Conspiracy*, United States Attorney's Office for the Northern District of Indiana, November 25, 2019.

*Gary, Indiana Woman Sentenced for Conspiracy to Commit Wire Fraud and Conspiracy to Commit Honest Services Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, November 20, 2019.

*South Bend, Indiana Man Sentenced for Felon in Possession of One or More Firearms*, United States Attorney's Office for the Northern District of Indiana, November 20, 2019.

*Fort Wayne Man Sentenced to Over 12 Years in Prison for Distribution of Heroin*, United States Attorney's Office for the Northern District of Indiana, November 19, 2019.

*Fort Wayne Man Sentenced to 262 Months in Prison for Conspiring to Distribute and Distribution of Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, November 19, 2019.

*Imperial Gangsters Gang Member Sentenced to 300 Months in Prison for Racketeering Conspiracy and Drug and Firearm Crimes*, United States Attorney's Office for the Northern District of Indiana, November 19, 2019.

*Michigan City Man Sentenced to 63 Months for Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, November 18, 2019.

*Lake Station Man Convicted at Trial of Drug Conspiracy and Causing Death During Drug Conspiracy*, United States Attorney's Office for the Northern District of Indiana, November 16, 2019.

*Chicago Man Sentenced to 65 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, November 14, 2019.

*Fort Wayne Man Sentenced to 117 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, November 14, 2019.

*Oklahoma Long Haul Trucker Sentenced to 27 Years in Prison for Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, November 13, 2019.

*Fort Wayne Man Sentenced to 120 Months for Possession with Intent to Distribute Crack Cocaine and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, November 13, 2019.

*Fort Wayne Man Sentenced to 84 Months for Possession of a Firearm by a Convicted Felon*, United States Attorney's Office for the Northern District of Indiana, November 13, 2019.

*Attorney General Announces Launch of Project Guardian – A Nationwide Strategic Plan to Reduce Gun Violence*, United States Attorney's Office for the Northern District of Indiana, November 13, 2019.

*South Bend Man Sentenced to Over 11 Years in Prison for Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, November 13, 2019.

*Indianapolis Man Sentenced to 252 Months in Prison for Conspiracy to Possess with Intent to Distribute Cocaine and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, November 8, 2019.

*Fort Wayne Man Sentenced to 188 Months in Prison for Attempted Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, November 8, 2019.

*Robbins, Illinois Man Sentenced to 57 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, November 7, 2019.

*Former Genesis Convention Center Employee Charged with Theft from a Local Government Entity*, United States Attorney's Office for the Northern District of Indiana, November 7, 2019.

*Fort Wayne Man Sentenced to 70 Months in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, November 5, 2019.



*Merrillville Woman Sentenced to 90 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, November 5, 2019.

*Chicago Duo Sentenced in HUD Fraud Scheme*, United States Attorney's Office for the Northern District of Indiana, November 1, 2019.

*Merrillville Man Sentenced to 90 Months in Prison for Conspiring to Rob the U.S. Postal Service*, United States Attorney's Office for the Northern District of Indiana, November 1, 2019.

*Woman Sentenced to 70 Months in Prison for Identity Theft and Bank Fraud*, United States Attorney's Office for the Northern District of Indiana, October 31, 2019.

*Man Sentenced to 57 Months in Prison for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 31, 2019.

*Auburn Man Sentenced to 5 Years in Prison for Growing Over 100 Marijuana Plants*, United States Attorney's Office for the Northern District of Indiana, October 31, 2019.

*Fort Wayne Man Sentenced to Over 10 Years in Prison for Distribution of Methamphetamine and Possession of a Firearm By a Convicted Felon*, United States Attorney's Office for the Northern District of Indiana, October 31, 2019.

*Man Found Guilty After 2-Day Jury Trial for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 30, 2019.

*Fort Wayne Man Sentenced to 78 Months in Prison for Receiving Materials Depicting the Sexual Exploitation of a Minor*, United States Attorney's Office for the Northern District of Indiana, October 28, 2019.

*Fort Wayne Man Sentenced to 15 Years in Prison for Sexual Exploitation of a Minor*, United States Attorney's Office for the Northern District of Indiana, October 28, 2019.

*Hammond Woman Sentenced for Wire Fraud, Mail Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, October 24, 2019.

*New Carlisle Man Convicted at Trial Sentenced to Prison and Ordered to Pay \$2,271,720.05 in Restitution*, United States Attorney's Office for the Northern District of Indiana, October 24, 2019.

*Latin King Gang Member Sentenced to Prison for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, October 24, 2019.

*Fort Wayne Man Sentenced to Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 23, 2019.

*Professor Pleads Guilty to a Scheme to Defraud the National Science Foundation*, United States Attorney's Office for the Northern District of Indiana, October 18, 2019.

*South Bend, Indiana Man Sentenced to 43 Years in Prison for Hobbs Act Robbery, Felon in Possession of a Firearm, and Brandishing a Firearm During and in Relation to a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, October 17, 2019.

*LaPorte Man Sentenced to 60 Years in Prison for Production of Child Pornography and Making a Destructive Device*, United States Attorney's Office for the Northern District of Indiana, October 17, 2019.

*Marion Man Sentenced to 84 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, October 16, 2019.

*Man Charged with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, October 16, 2019.

*Deported Felon Sentenced to 60 Months in Prison for Possessing with Intent to Distribute Cocaine*, United States Attorney's Office for the Northern District of Indiana, October 16, 2019.

*Gary Man Sentenced to 108 Months in Prison for Conspiracy to Distribute Crack Cocaine*, United States Attorney's Office for the Northern District of Indiana, October 15, 2019.

*Chicago, Illinois Man Sentenced to 96 Months in Prison for Hobbs Act Robbery and Brandishing a Firearm During a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, October 15, 2019.

*Mishawaka, Indiana Man Sentenced for Felon in Possession*, United States Attorney's Office for the Northern District of Indiana, October 15, 2019.

*Fort Wayne Man Sentenced to 60 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 10, 2019.

*Fort Wayne Man Sentenced to 120 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, October 9, 2019.

*Three-Time Deported Felon Sentenced to 30 Months in Prison for Illegal Reentry of a Removed Alien*, United States Attorney's Office for the Northern District of Indiana, October 8, 2019.

*Duo Sentenced and Ordered to Pay \$757,499.06 in Restitution*, United States Attorney's Office for the Northern District of Indiana, October 4, 2019.

*Ligonier Man Sentenced to 165 Months*, United States Attorney's Office for the Northern District of Indiana, October 3, 2019.

*Michigan City, Indiana Man Sentenced to 72 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, October 3, 2019.

*Osceola, Indiana Man Sentenced to 15 Years in Prison for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 3, 2019.

*Westfield Man Sentenced to 9 Years in Prison for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, September 30, 2019.

*Man Charged in Criminal Complaint with Griffith Robbery*, United States Attorney's Office for the Northern District of Indiana, September 30, 2019.

*Fort Wayne Man Sentenced to 117 Months in Prison for Maintaining a Drug-Involved Premises and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, September 25, 2019.

*Fort Wayne Woman Sentenced to 63 Months for Possession with Intent to Distribute a Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, September 24, 2019.

*Twice Deported Felon Sentenced for Illegal Reentry of a Removed Alien*, United States Attorney's Office for the Northern District of Indiana, September 24, 2019.

*Florida Man Sentenced to 10 Years for Drug Trafficking*, United States Attorney's Office for the Northern District of Indiana, September 25, 2019.

*South Bend, Indiana Man Sentenced to 10 Years in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, September 24, 2019.

*Kouts, Indiana Man Sentenced for Fraud Following Multiple Arson Fires*, United States Attorney's Office for the Northern District of Indiana, September 24, 2019.

*Attorney General William Barr Announced U.S. Attorney Thomas L. Kirsch II as One of New U.S. Attorneys to Advisory Committee*, United States Attorney's Office for the Northern District of Indiana, September 20, 2019.

*Duo Found Guilty of Heroin Conspiracy After 4-Day Trial*, United States Attorney's Office for the Northern District of Indiana, September 20, 2019.

*New Haven Man Convicted Following 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, September 19, 2019.

*South Bend, Indiana Man Sentenced for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, September 19, 2019.

*Gary Woman Ordered to Pay \$195,602.09 in Restitution*, United States Attorney's Office for the Northern District of Indiana, September 17, 2019. Copy supplied.

*Latin King Gang Member Sentenced to 66 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, September 12, 2019.

*Allen County Receives High Intensity Drug Trafficking Area (HIDTA) Designation*, United States Attorney's Office for the Northern District of Indiana, September 12, 2019.

*Hobart Woman Sentenced for Her Part of a Scheme that Diverted Over \$800,000 from Her Employer*, United States Attorney's Office for the Northern District of Indiana, September 11, 2019.

*Portland, Indiana Man Sentenced to 15 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, September 10, 2019.

*Columbia City Man Sentenced to 120 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, September 10, 2019.

*Whiting Man Sentenced to Prison and Ordered to Pay Restitution to the City of Hammond*, United States Attorney's Office for the Northern District of Indiana, September 6, 2019.

*Hobart Man Sentenced to 84 Months in Prison for Possession with Intent to Distribute Heroin and Cocaine and Possession of Firearms in Furtherance of a Drug Trafficking*

*Crime*, United States Attorney's Office for the Northern District of Indiana, September 6, 2019.

*Woodburn Man Sentenced to 60 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, September 5, 2019.

*Fort Wayne Woman Sentenced to 84 Months in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, September 4, 2019.

*Extortion Scheme Mastermind Sentenced for Conspiracy to Commit Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, September 3, 2019.

*Fort Wayne Man Sentenced to 168 Months in Prison for Maintaining a Drug-Involved Premises and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, August 29, 2019.

*Lafayette Man Charged in Criminal Complaint for Distribution of Methamphetamine and with Possession with Intent to Distribute Methamphetamine within 100 Feet of an Elementary School*, United States Attorney's Office for the Northern District of Indiana, August 29, 2019.

*Fort Wayne Woman Sentenced to 156 Months in Prison for Possession with Intent to Distribute Narcotics and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, August 29, 2019.

*Former Genesis Convention Center Employee Charged with Theft from a Local Government Entity*, United States Attorney's Office for the Northern District of Indiana, August 27, 2019.

*Auburn Man Sentenced to 60 Months in Prison for Possessing with Intent to Distribute Heroin and Selling a Firearm to a Felon*, United States Attorney's Office for the Northern District of Indiana, August 27, 2019.

*Fort Wayne Man Sentenced to 159 Months in Prison for Possession with Intent to Distribute Controlled Substances and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, August 27, 2019.

*Fort Wayne Man Sentenced to 204 Months in Prison for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, August 20, 2019.

*Chicago Man Sentenced to 154 Months in Prison for Wire Fraud, Mail Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, August 20, 2019.

*South Bend, Indiana Man Sentenced*, United States Attorney's Office for the Northern District of Indiana, August 14, 2019.

*Fort Wayne Man Ordered to Pay \$566,618.50 in Restitution for Wire Fraud Conviction*, United States Attorney's Office for the Northern District of Indiana, August 13, 2019.

*LaPorte Man Charged with Transportation of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 9, 2019.

*Fort Wayne Man Convicted After 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, August 8, 2019.

*Diquan Ray Sentenced and Ordered to Pay \$114,539.17 in Restitution*, United States Attorney's Office for the Northern District of Indiana, August 7, 2019.

*South Bend, Indiana Man Sentenced for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, August 1, 2019.

*Illinois Man Convicted After Jury Trial Sentenced to 3 Years Imprisonment*, United States Attorney's Office for the Northern District of Indiana, July 25, 2019.

*Camari Stinson Sentenced to 123 Months Imprisonment*, United States Attorney's Office for the Northern District of Indiana, July 25, 2019.

*South Bend, Indiana Man Sentenced for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, July 25, 2019.

*Granger, Indiana Man Sentenced to Over 5 Years in Prison and Ordered to Pay Over \$1.6 Million in Restitution*, United States Attorney's Office for the Northern District of Indiana, July 25, 2019.

*Jayson Lane Sentenced to 110 Months in Prison for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 24, 2019.

*Ligonier, Indiana Man Sentenced to 70 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, July 24, 2019.

*South Bend, Indiana Man Sentenced for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, July 24, 2019.

*Gary Man Sentenced to 60 Months in Prison for Distribution of Methamphetamine and Possessing a Short Barrel Shotgun as a Felon*, United States Attorney's Office for the Northern District of Indiana, July 24, 2019.

*Ashley, Indiana Man Sentenced to 102 Months Imprisonment*, United States Attorney's Office for the Northern District of Indiana, July 24, 2019.

*Kouts Woman Indicted for Willful Failure to Pay Federal Payroll Taxes*, United States Attorney's Office for the Northern District of Indiana, July 22, 2019.

*Markquise Harris Sentenced to 60 Months in Prison for Hobbs Act Robbery*, United States Attorney's Office for the Northern District of Indiana, July 17, 2019.

*Elkhart, Indiana Man Sentenced to 47 Years in Prison for Hobbs Act Robbery and Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 15, 2019.

*South Bend, Indiana Man Sentenced to 5 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, July 15, 2019.

*Chicago Woman Sentenced for Role as Leader of Sex Trafficking Scheme*, United States Attorney's Office for the Northern District of Indiana, July 10, 2019.

*Latin King Gang Member Convicted at Trial of Conspiracy to Participate in Racketeering Activity, Including Two Murders*, United States Attorney's Office for the Northern District of Indiana, July 9, 2019.

*Ligonier, Indiana Man Sentenced to 87 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, July 1, 2019.

*20 Individuals Charged in Eight Indictments with Distribution of Various Narcotics*, United States Attorney's Office for the Northern District of Indiana, June 26, 2019.

*Mishawaka, Indiana Man Sentenced for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, June 25, 2019.

*Indianapolis, Indiana Man Sentenced to 97 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, June 25, 2019.

*Lafayette, Indiana Man Sentenced to 97 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, June 25, 2019.

*Knox, Indiana Man Charged with Distribution of Opioids and Testosterone*, United States Attorney's Office for the Northern District of Indiana, June 24, 2019.

*Ten Additional Latin Dragon Members Charged with Racketeering Conspiracy Including Five Members Charged with Involvement in Four Separate Murders*, United States Attorney's Office for the Northern District of Indiana, June 21, 2019.

*South Bend Man Convicted Following 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, June 13, 2019.

*LaPorte, Indiana Man Sentenced to 60 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, June 13, 2019.

*South Bend, Indiana Woman Sentenced to 72 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, June 13, 2019.

*Highland, Indiana Man Sentenced to 30 Years in Prison for Production and Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, June 13, 2019.

*Latin King Gang Member Sentenced to Life in Prison for Racketeering Conspiracy Including Murder of Innocent Victim and Drug Conspiracy*, United States Attorney's Office for the Northern District of Indiana, June 13, 2019.

*Elkhart, Indiana Man Sentenced to 120 Months in Prison for Possession of Child Pornography After Previous Conviction for Similar Federal Offenses*, United States Attorney's Office for the Northern District of Indiana, June 10, 2019.

*Mishawaka, Indiana Man Sentenced to 41 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, June 5, 2019.

*Garrett Man Sentenced to 84 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 31, 2019.

*Lafayette Man Sentenced to 270 Months in Prison for Sexual Exploitation of a Minor*, United States Attorney's Office for the Northern District of Indiana, May 31, 2019.



*Rome City Man Sentenced to 150 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 31, 2019.

*Fort Wayne Resident Sentenced to 68 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, May 30, 2019.

*Angola Man Sentenced to 121 Months in Prison for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, May 29, 2019.

*New Jersey Man Sentenced to 97 Months in Prison for Possession with the Intent to Distribute Cocaine*, United States Attorney's Office for the Northern District of Indiana, May 29, 2019.

*Former City of Gary Network Administrator Sentenced*, United States Attorney's Office for the Northern District of Indiana, May 28, 2019.

*Indianapolis Man Sentenced to 200 Months in Prison for Conspiring to Possess with the Intent to Distribute Cocaine and Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 28, 2019.

*Gary Man Sentenced to 70 Months in Prison for Distribution of Cocaine and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 22, 2019.

*South Bend Man Convicted Following a 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, May 21, 2019.

*National Police Week is May 12-18, 2019*, United States Attorney's Office for the Northern District of Indiana, May 14, 2019.

*New Carlisle Man Convicted Following a 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, May 14, 2019.

*Gary Man Sentenced to 96 Months in Prison for Brandishing Firearm During Robbery of U.S. Postal Employee*, United States Attorney's Office for the Northern District of Indiana, May 14, 2019.

*South Bend Man Sentenced to 120 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, May 9, 2019.

*Griffith Man Sentenced to 84 Months in Prison for Possession of a Firearm Prior to Thwarted Home Invasion Robbery*, United States Attorney's Office for the Northern District of Indiana, May 9, 2019.

*Bruce Williams Sentenced to 60 Months in Prison for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 9, 2019.

*Goshen Man Sentenced to 61 Months in Prison for Possessing with Intent to Distribute Marijuana and Possession of Firearms in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 9, 2019.

*Gary Man Sentenced to 174 Months in Prison for Possession of Firearm with an Obliterated Serial Number and Stolen Firearm*, United States Attorney's Office for the Northern District of Indiana, May 9, 2019.

*South Bend Man Sentenced to 120 Months in Prison for Possessing with Intent to Distribute Fentanyl and Possessing One or More Firearms in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 8, 2019.

*Rochester, Indiana Man Sentenced to 77 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, May 7, 2019.

*Ashley Patterson Sentenced to 125 Months in Prison for Bank Robbery and Discharge of a Firearm During and in Relation to a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, May 2, 2019.

*Wolcottville Woman Indicted for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, May 1, 2019.

*Dallas, Texas Woman Sentenced for Email Compromise Scheme*, United States Attorney's Office for the Northern District of Indiana, April 30, 2019.

*Munster Doctor Sentenced for Dispensing Opioids Outside the Scope of Professional Practice and Not for a Legitimate Medical Purpose*, United States Attorney's Office for the Northern District of Indiana, April 29, 2019.

*Benton Harbor, Michigan Man Sentenced to Prison for Hobbs Act Robbery and Carjacking*, United States Attorney's Office for the Northern District of Indiana, April 26, 2019.

*LaPorte Man Entered Guilty Plea to Production of Child Pornography and Making a Destructive Device*, United States Attorney's Office for the Northern District of Indiana, April 26, 2019.

*Three Charged in Criminal Complaint with Kidnapping*, United States Attorney's Office for the Northern District of Indiana, April 26, 2019.

*Merrillville Man Sentenced to 78 Months in Prison for Possession and Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, April 25, 2019.

*Angola Man Sentenced to 93 Months in Prison for Selling Firearms to a Felon and Transporting Stolen Firearms in Interstate Commerce*, United States Attorney's Office for the Northern District of Indiana, April 23, 2019.

*Michigan City, Indiana Man Sentenced to 71 Months in Prison for Hobbs Act Robbery*, United States Attorney's Office for the Northern District of Indiana, April 18, 2019.

*Recent Tax Prosecutions Serve as a Reminder to Accurately File and Pay Taxes as the April 15 Deadline Approaches*, United States Attorney's Office for the Northern District of Indiana, April 11, 2019.

*Elkhart Man Convicted Following 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, April 11, 2019.

*Justice Department Observes National Crime Victims' Rights Week*, United States Attorney's Office for the Northern District of Indiana, April 9, 2019.

*Gary Woman Ordered to Pay \$195,622 in Restitution*, United States Attorney's Office for the Northern District of Indiana, April 9, 2019.

*Monticello Man Ordered to Pay \$280,480 in Restitution*, United States Attorney's Office for the Northern District of Indiana, April 9, 2019.

*Lafayette Man Sentenced to 70 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, April 5, 2019.

*Munster Man Sentenced to 29 Years in Prison in Connection with September 2017 Explosion at East Chicago Post Office and Subsequent Mailing*, United States Attorney's Office for the Northern District of Indiana, April 4, 2019.

*Man Sentenced to 30 Years in Prison for Possession and Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, April 4, 2019.

*Three Indicted in Fort Wayne for Hobbs/Armed Robbery Related Offenses*, United States Attorney's Office for the Northern District of Indiana, March 29, 2019.

*Fort Wayne Man Sentenced to 180 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, March 28, 2019.

*Fort Wayne Man Sentenced to 135 Months in Prison for Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, March 27, 2019.

*Fort Wayne Man Sentenced to 130 Months in Prison for Attempted Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, March 27, 2019.

*Fort Wayne Man Sentenced to 33 Months in Prison and Ordered to Pay \$585,652.78*, United States Attorney's Office for the Northern District of Indiana, March 26, 2019.

*Christopher Foster Sentenced and Ordered to Pay \$1,414,030 in Restitution for Interstate Transportation of Stolen Property*, United States Attorney's Office for the Northern District of Indiana, March 26, 2019.

*Former Fort Wayne Attorney Sentenced in Federal Court*, United States Attorney's Office for the Northern District of Indiana, March 26, 2019.

*Roanoke Woman Sentenced to 51 Months in Prison for Mail Fraud and Aggravated Identity Fraud*, United States Attorney's Office for the Northern District of Indiana, March 25, 2019.

*Two Elkhart, Indiana Police Officers Charged with Federal Civil Rights Offense*, United States Attorney's Office for the Northern District of Indiana, March 22, 2019.

*Two Charged Following Arrest in Merrillville, Indiana*, United States Attorney's Office for the Northern District of Indiana, March 20, 2019.

*South Bend Man Convicted Following 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, March 12, 2019.

*Man Sentenced to 57 Months in Prison for Possession with Intent to Distribute More Than One Kilogram of Heroin*, United States Attorney's Office for the Northern District of Indiana, March 4, 2019.

*Fort Wayne Man Sentenced to 168 Months in Prison for Possessing with Intent to Distribute a Controlled Substance and for Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, March 1, 2019.

*Kokomo Man Charged with Extorting Sexual Images from Individuals*, United States Attorney's Office for the Northern District of Indiana, February 28, 2019.

*The Northern District of Indiana's U.S. Attorney's Office Collect \$6,016,074.83 in Civil and Criminal Actions for U.S. Taxpayers in Fiscal year 2018*, United States Attorney's Office for the Northern District of Indiana, February 27, 2019.

*Anderson Man Sentenced to 70 Months in Prison for Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, February 26, 2019.

*Two Charged with Robbing Cellular Phone Store in Fort Wayne*, United States Attorney's Office for the Northern District of Indiana, February 26, 2019.

*Rome City Man Sentenced to 204 Months in Prison for Possessing with Intent to Distribute Methamphetamine and for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, February 25, 2019.

*Lafayette Man Sentenced to 78 Months in Prison for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, February 22, 2019.

*Two Men Charged in Criminal Complaint with Robbery*, United States Attorney's Office for the Northern District of Indiana, February 14, 2019.

*Gary Man Charged in Criminal Complaint with Distribution of Crack Cocaine, Possession with Intent to Distribute Crack Cocaine, and Possessing a Firearm in Furtherance of Drug Trafficking*, United States Attorney's Office for the Northern District of Indiana, February 13, 2019.

*Duo Charged with Conspiracy to Distribute Narcotics into Indiana Correctional Facilities*, United States Attorney's Office for the Northern District of Indiana, February 13, 2019.

*South Bend Man Convicted Following 2-Day Trial*, United States Attorney's Office for the Northern District of Indiana, February 7, 2019.

*Lafayette, Indiana Man Sentenced to 30 Years in Prison for Distribution of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, February 7, 2019.

*Mishawaka Man Sentenced to 30 Years in Prison for Bank Robbery and Gun Crimes*, United States Attorney's Office for the Northern District of Indiana, February 5, 2019.

*Gary Man Sentenced to 74 Months in Prison for Distribution of Cocaine and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, February 5, 2019.

*Mishawaka, Indiana Man Sentenced for Unlawful Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, February 1, 2019.

*Man Pleads Guilty to Aiding and Abetting Murder Resulting from Use of a Firearm During a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, January 29, 2019.

*Merrillville Duo Convicted After a Four Day Jury Trial for Conspiring to Rob and Aiding and Abetting Their Robbery*, United States Attorney's Office for the Northern District of Indiana, January 29, 2019.

*Chicago Man Sentenced to 70 Months in Prison for Possession with Intent to Distribute One Kilogram of Heroin*, United States Attorney's Office for the Northern District of Indiana, January 4, 2019.

*Gary Man Indicted for Disaster Relief Fraud*, United States Attorney's Office for the Northern District of Indiana, December 20, 2018.

*Man Sentenced to Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, December 20, 2018.

*Man Indicted for Financial Fraud and Possessing ATM Skimming Devices*, United States Attorney's Office for the Northern District of Indiana, December 19, 2018.

*Romanian Woman Indicted for Financial Fraud and Possessing ATM Skimming Devices*, United States Attorney's Office for the Northern District of Indiana, December 19, 2018.

*Kalkaska, Michigan Woman Sentenced for Theft of Federal Funds and Tax Evasion*, United States Attorney's Office for the Northern District of Indiana, December 19, 2018.

*Mishawaka Indiana Man Sentenced for Possessing Methamphetamine for Distribution and Possessing a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 19, 2018.

*Fort Wayne Man Sentenced to 108 Months in Prison for Conspiracy to Defraud the United States and Maintaining a Place for Distributing and Using Cocaine*, United States Attorney's Office for the Northern District of Indiana, December 18, 2018.

*Former Northern Indiana Resident Charged with Mail Fraud for Scamming Elderly Investors*, United States Attorney's Office for the Northern District of Indiana, December 17, 2018.

*Former Porter County Officer Sentenced for Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, December 17, 2018.

*Fort Wayne Man Sentenced to 135 Months Imprisonment for Conspiracy to Distribute Cocaine, Methamphetamine and Heroin*, United States Attorney's Office for the Northern District of Indiana, December 14, 2018.

*Whiting Man Convicted After 4-Day Trial*, United States Attorney's Office for the Northern District of Indiana, December 13, 2018.

*Elkhart Man Indicted for Possession and Transportation of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, December 13, 2018.

*New Carlisle Man Charged with Mail Fraud*, United States Attorney's Office for the Northern District of Indiana, December 12, 2018.

*Former South Bend Resident Charged with Mail Fraud for Scamming Elderly Investors*, United States Attorney's Office for the Northern District of Indiana, December 12, 2018.

*South Bend Man Charged with Possessing Methamphetamine for Distribution*, United States Attorney's Office for the Northern District of Indiana, December 12, 2018.

*South Bend Man Sentenced to 40 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 12, 2018.

*Elkhart Man Sentenced to 70 Months in Prison for Possession with Intent to Distribute Methamphetamine and Heroin*, United States Attorney's Office for the Northern District of Indiana, December 10, 2018.

*South Bend Man Sentenced to 70 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 10, 2018.

*Hobart Man Charged in Criminal Complaint with Possession with Intent to Distribute Heroin and Cocaine and Possessing Firearms as a Felon*, United States Attorney's Office for the Northern District of Indiana, December 7, 2018.

*Man Charged in Criminal Complaint with Interstate Kidnapping*, United States Attorney's Office for the Northern District of Indiana, December 6, 2018.

*Gary Man Sentenced to 96 Months Imprisonment Following Conviction for Possessing Firearm as a Felon*, United States Attorney's Office for the Northern District of Indiana, December 6, 2018.

*Mishawaka Man Sentenced to 78 Months in Prison for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, December 6, 2018.

*Munster Man Enters Guilty Plea in Connection with September 2017 Explosion at East Chicago Post Office and Subsequent Mailing*, United States Attorney's Office for the Northern District of Indiana, December 4, 2018.

*Man Charged with Possessing ATM Skimming Devices*, United States Attorney's Office for the Northern District of Indiana, December 3, 2018.

*Albion Man Sentenced to 108 Months in Prison for Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, November 30, 2018.

*South Bend, Indiana Man Sentenced to 64 Months in Prison for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, November 28, 2018.

*Warsaw, Indiana Man Sentenced to 91 Months in Prison for Transporting Child Pornography*, United States Attorney's Office for the Northern District of Indiana, November 28, 2018.

*Munster Man Filed Guilty Plea in Connection with September 2017 Explosion at East Chicago Post Office and Subsequent Mailing*, United States Attorney's Office for the Northern District of Indiana, November 27, 2018.



*The Last of 21 Latin King Members and Associates Sentenced to 27 Years in Prison for Racketeering Conspiracy Involving Two Murders in Indiana*, United States Attorney's Office for the Northern District of Indiana, November 27, 2018.

*Mishawaka Man Sentenced to Over 19 Years in Prison for Possessing with the Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, November 27, 2018.

*South Bend Man Sentenced to 60 Months in Prison for Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, November 20, 2018.

*Hammond Man Sentenced to 28 Years in Prison for Latin King Racketeering Conspiracy Including Murder of Innocent Victim*, United States Attorney's Office for the Northern District of Indiana, November 19, 2018.

*Twenty Seven Indiana/Kentucky/Ohio Regional Council of Carpenters Union Members Sentenced for Health Care Theft*, United States Attorney's Office for the Northern District of Indiana, November 19, 2018.

*Mishawaka Man Sentenced to 180 Months in Prison for Production of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, November 14, 2018.

*Illinois Man Sentenced to 57 Months in Prison for Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, November 6, 2018.

*Robert Watkins Sentenced and Ordered to Pay \$1,291,030 in Restitution for Interstate Transportation of Stolen Property*, United States Attorney's Office for the Northern District of Indiana, October 30, 2018.

*Fort Wayne Man Sentenced to 140 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, October 26, 2018.

*Allen County Man Sentenced to 135 Months in Prison for Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, October 25, 2018.

*Jury Finds Lafayette Man Guilty of Producing and Distributing Child Pornography*, United States Attorney's Office for the Northern District of Indiana, October 24, 2018.

*Four Additional Latin Dragon Members Charged with Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, October 23, 2018.

*Firearms and Drug Trafficking Ring Indicted*, United States Attorney's Office for the Northern District of Indiana, October 19, 2018.

*Charges Added to the Latin King Street Gang*, United States Attorney's Office for the Northern District of Indiana, October 19, 2018.

*South Bend Man Sentenced to 60 Months in Prison for Possessing a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, October 18, 2018.

*Northwest Ambulance Services Owner Charged with 11 Count Indictment*, United States Attorney's Office for the Northern District of Indiana, October 17, 2018.

*U.S. Attorney Thomas L. Kirsch II Announces Progress in Making Our Communities Safer Through Project Safe Neighborhoods*, United States Attorney's Office for the Northern District of Indiana, October 12, 2018.

*South Bend Man Sentenced to 63 Months in Prison for Robbery*, United States Attorney's Office for the Northern District of Indiana, October 11, 2018.

*Claypool, Indiana Man Sentenced to 100 Months in Prison; Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, October 11, 2018.

*Settlement with Martin Enterprises, Inc. and Its Surety for Submitting False Claims for Demolition Work Under the U.S. Treasury's Blight Elimination Program*, United States Attorney's Office for the Northern District of Indiana, October 5, 2018.

*Arizona Man Charged with Identity Theft*, United States Attorney's Office for the Northern District of Indiana, October 5, 2018.

*Jossean Manuel Echevarria and Diquan Nashawn Ray Charged with Interstate Transportation of Stolen Property*, United States Attorney's Office for the Northern District of Indiana, October 1, 2018.

*Guilty Jury Verdict for Kouts Man*, United States Attorney's Office for the Northern District of Indiana, September 28, 2018.

*Man Sentenced to 108 Months in Prison for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, September 28, 2018.

*Fort Wayne Man Sentenced to 180 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, September 28, 2018.

*Albion Man Sentenced to 170 Months in Prison for Drug and Firearm Offenses*, United States Attorney's Office for the Northern District of Indiana, September 27, 2018.

*Two Valparaiso Residents Charged with Tax Offenses*, United States Attorney's Office for the Northern District of Indiana, September 26, 2018.

*Three Charged with Conspiracy to Rob a Post Office*, United States Attorney's Office for the Northern District of Indiana, September 25, 2018.

*Former Porter County Officer Charged with Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, September 24, 2018.

*Chicago Man Sentenced to 168 Months in Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, September 20, 2018.

*David Larson Sentenced to 87 Months in Prison for Possession of Pseudoephedrine Knowing It Would Be Used to Manufacture Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, September 20, 2018.

*Vondell Henry Jr. Sentenced to 105 Months in Prison for Hobbs Act Robbery and Brandishing a Firearm During and in Relation to a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, September 20, 2018.

*Michigan City Man Sentenced to 180 Months in Prison for Being a Felon in Possession*, United States Attorney's Office for the Northern District of Indiana, September 20, 2018.

*South Bend Man Sentenced to 60 Months in Prison; Interstate Travel in Aid of Racketeering*, United States Attorney's Office for the Northern District of Indiana, September 19, 2018.

*Hobart Man Sentenced and Ordered to Pay Over \$300,000 in Restitution for Participation in Wire Fraud Scheme*, United States Attorney's Office for the Northern District of Indiana, September 19, 2018.

*Chicago Man Sentenced to 46 Months in Prison for Distribution of Heroin*, United States Attorney's Office for the Northern District of Indiana, September 18, 2018.

*Fort Wayne Man Charged with Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, September 13, 2018.

*Former East Chicago Councilman Sentenced to 20 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, September 11, 2018.

*Demotte Man Charged for Possession with Intent to Distribute Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, September 6, 2018.

*Bristol Man Sentenced to 63 Months in Prison for Theft of Firearms from a Federally Licensed Firearms Dealer and Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, September 5, 2018.

*Fort Wayne Man Sentenced to 181 Months Imprisonment for Possession with Intent to Distribute Controlled Substances and for Possessing a Firearm*, United States Attorney's Office for the Northern District of Indiana, August 31, 2018.

*South Bend Man Sentenced to 123 Months in Prison for Distribution of Cocaine*, United States Attorney's Office for the Northern District of Indiana, August 30, 2018.

*Princeton Man Sentenced to 63 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, August 30, 2018.

*Fort Wayne Man Sentenced to 60 Months in Prison for Receipt of Material Involving the Sexual Exploitation of Minors*, United States Attorney's Office for the Northern District of Indiana, August 29, 2018.

*Lamont Coleman Drug Trafficking Organization Charged*, United States Attorney's Office for the Northern District of Indiana, August 29, 2018.

*Michigan Couple Sentenced for Firearms Offenses*, United States Attorney's Office for the Northern District of Indiana, August 24, 2018.

*Monticello Man Sentenced to 70 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 24, 2018.

*Merrillville Man Sentenced to 70 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 24, 2018.

*Former Indiana Resident Charged with Providing and Conspiring to Provide Material Support to ISIS*, United States Attorney's Office for the Northern District of Indiana, August 23, 2018.

*Former Saint John, Indiana Resident Was Sentenced to 78 Months in Prison After Being Charged with Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 22, 2018.

*Warsaw Man Sentenced to More Than 20 Years in Prison for Possession of a Firearm in Furtherance of a Drug Trafficking Crime and Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, August 21, 2018.

*Indiana Man Sentenced to 15 Years for Distributing Information on Explosives and Poisons for Use in a Terror Attack*, United States Attorney's Office for the Northern District of Indiana, August 20, 2018.

*Indianapolis, Indiana Man Sentenced for Distribution of Cocaine*, United States Attorney's Office for the Northern District of Indiana, August 16, 2018.

*Justice Department, DEA Propose Significant Opioid Manufacturing Reduction in 2019*, United States Attorney's Office for the Northern District of Indiana, August 16, 2018. Copy supplied.

*Two Union Officials Charged with Labor Extortion Conspiracy*, United States Attorney's Office for the Northern District of Indiana, August 16, 2018. Copy supplied.

*Chicago, Illinois, Man Sentenced for Heroin Conspiracy and Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, August 16, 2018.

*Lafayette Man Sentenced to 78 Months in Prison for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 14, 2018.

*Mishawaka Man Sentenced to 210 Months in Prison for Theft of Firearms, Possession of Firearms by a Felon and Possession of Stolen Firearms*, United States Attorney's Office for the Northern District of Indiana, August 14, 2018.

*Mishawaka Man Sentenced to 68 Months in Prison for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, August 6, 2018.

*Indiana Man Sentenced to 51 Months in Prison for Firearms Violations*, United States Attorney's Office for the Northern District of Indiana, August 6, 2018.

*Granger Man Sentenced to 168 Months in Prison and Ordered to Pay \$1,410,580.31 in Restitution*, United States Attorney's Office for the Northern District of Indiana, August 3, 2018.

*Michigan City Man Charged in the Robbery of Three Banks*, United States Attorney's Office for the Northern District of Indiana, August 1, 2018.

*Three Indicted for Their Role in a Tax Fraud Scheme*, United States Attorney's Office for the Northern District of Indiana, August 1, 2018.

*Fort Wayne Man Sentenced to 120 Months in Prison for Possession of Material Depicting Minors Engaged in Sexually Explicit Conduct*, United States Attorney's Office for the Northern District of Indiana, July 31, 2018.

*Woman Sentenced to 51 Months in Prison; Theft of Mail and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, July 31, 2018.

*Joliet, Illinois Man Sentenced to 51 Months in Prison for Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, July 31, 2018.

*South Bend Man Sentenced to 180 Months in Prison for Conspiracy to Distribute Over 1 Kilogram of Heroin*, United States Attorney's Office for the Northern District of Indiana, July 31, 2018.

*Fort Wayne Man Sentenced to 180 Months in Prison for Possession and Receipt of Material Depicting Minors Engaged in Sexually Explicit Conduct*, United States Attorney's Office for the Northern District of Indiana, July 30, 2018.

*South Bend Man Sentenced to 70 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 30, 2018.

*Gary Man Sentenced to 71 Months in Prison for Possession with Intent to Distribute Over 100 Grams of Heroin*, United States Attorney's Office for the Northern District of Indiana, July 30, 2018.

*South Bend Man Sentenced to 63 Months in Prison for Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 30, 2018.

*Gary Man Sentenced to 151 Months in Prison for Distribution of Cocaine Base*, United States Attorney's Office for the Northern District of Indiana, July 26, 2018.

*Munster Doctor Enters a Guilty Plea for Distribution of a Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, July 26, 2018.

*Press Statement Regarding Samantha Elhassani*, United States Attorney's Office for the Northern District of Indiana, July 24, 2018.

*Hammond Man Sentenced to 78 Months in Prison for Conspiracy to Participate in Racketeering*, United States Attorney's Office for the Northern District of Indiana, July 24, 2018.

*Lafayette Man Sentenced to 144 Months in Prison for Conspiracy to Possess with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, July 20, 2018.

*West Lafayette, Indiana Couple Indicted in a Scheme to Defraud the National Science Foundation*, United States Attorney's Office for the Northern District of Indiana, July 19, 2018.

*Michigan City Man Sentenced to 188 Months in Prison for Being a Felon in Possession of a Firearm and Possession with Intent to Distribute Cocaine*, United States Attorney's Office for the Northern District of Indiana, July 19, 2018.

*South Bend Man Sentenced to 120 Months in Prison for Being a Felon in Possession of One or More Stolen Firearms*, United States Attorney's Office for the Northern District of Indiana, July 19, 2018.

*Michael Brooks a/k/a Michael Sandifer Sentenced to 65 Months in Prison for Hobbs Act Robbery and Possession of a Firearm in Furtherance of a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, July 17, 2018.

*Hammond Man Sentenced to 110 Months in Prison for Conspiracy to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, July 12, 2018.

*Michigan City Man Sentenced to 96 Months in Prison for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, July 10, 2018.

*South Bend Woman Sentenced to 60 Months in Prison for Possessing Cocaine with Intent to Deliver*, United States Attorney's Office for the Northern District of Indiana, July 9, 2018.

*Timothy Downs, Former Chief of Lake County Sheriff's Department, and William Szarmach, Owner of CSA Towing, Sentenced*, United States Attorney's Office for the Northern District of Indiana, July 9, 2018.

*LaPorte, Indiana Man Sentenced to 86 Months in Prison for Possessing Heroin with Intent to Deliver*, United States Attorney's Office for the Northern District of Indiana, July 5, 2018.

*South Bend, Indiana Man Sentenced for Distribution of Over 50 Grams of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, July 5, 2018.

*Noblesville Man Sentenced to 33 Months in Prison and Ordered to Pay \$331,493 in Restitution*, United States Attorney's Office for the Northern District of Indiana, July 3, 2018.

*LaPorte Indiana Man Sentenced to 88 Months in Prison for Transporting Child Pornography*, United States Attorney's Office for the Northern District of Indiana, July 3, 2018.

*Individual Sentenced to 147 Months Imprisonment for Drug Distribution*, United States Attorney's Office for the Northern District of Indiana, July 2, 2018.

*Fort Wayne Man Sentenced to 135 Months Imprisonment*, United States Attorney's Office for the Northern District of Indiana, July 2, 2018.

*Fort Wayne Man Sentenced to 71 Months in Prison for Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, June 29, 2018.

*National Healthcare Fraud Takedown Results in Charges Against 601 Individuals Responsible for \$2 Billion in Fraud Losses; Largest Health Care Fraud Enforcement Action in Department of Justice History Resulted in 76 Doctors Charged and 84 Opioid Cases Involving More than 13 Million Illegal Dosages of Opioids*, United States Attorney's Office for the Northern District of Indiana, June 28, 2018.

*Man Charged in Robbery of Brinks Armored Truck*, United States Attorney's Office for the Northern District of Indiana, June 28, 2018.

*Crown Point Man Sentenced to 14 Months in Prison and Ordered to Pay Over \$1 Million Dollars in Restitution*, United States Attorney's Office for the Northern District of Indiana, June 22, 2018.

*East Chicago Man Sentenced to 70 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, June 20, 2018.



*Wisconsin Man Sentenced to 235 Months in Prison for Attempted Sex Trafficking of a Minor*, United States Attorney's Office for the Northern District of Indiana, June 20, 2018.

*Gary Man Sentenced to 135 Months in Prison; Hobbs Act Robbery*, United States Attorney's Office for the Northern District of Indiana, June 20, 2018.

*Elkhart Woman Sentenced to 84 Months in Prison for Wire Fraud and Aggravated ID Theft*, United States Attorney's Office for the Northern District of Indiana, June 19, 2018.

*Elkhart Man Sentenced to 86 Months in Prison for Being a Felon in Possession of Firearms*, United States Attorney's Office for the Northern District of Indiana, June 14, 2018.

*Two Charged in Shooting of an ATF Agent*, United States Attorney's Office for the Northern District of Indiana, June 8, 2018.

*Former Merrillville Town Councilman Sentenced to 15 Months in Prison for Bribery in Connection with the Town's Towing Contract*, United States Attorney's Office for the Northern District of Indiana, June 5, 2018.

*Chicago Man Sentenced to 82 Months in Prison for Illegally Re-entering the U.S.*, United States Attorney's Office for the Northern District of Indiana, June 4, 2018.

*On 500<sup>th</sup> Day of Trump Administration, Attorney General Sessions Announces 311 New Assistant United States Attorney Positions; Largest Increase in AUSAs in Decades Allocates Prosecutors to Focus on Violent Crime and Civil Enforcement*, United States Attorney's Office for the Northern District of Indiana, June 4, 2018.

*Gary Man Sentenced to 41 Months in Prison for Intent to Distribute Crack Cocaine*, United States Attorney's Office for the Northern District of Indiana, May 31, 2018.

*South Bend Man Sentenced for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 30, 2018.

*South Bend Man Sentenced for Distribution of Methamphetamine*, United States Attorney's Office for the Northern District of Indiana, May 30, 2018.

*Two Indiana Latin King Members Convicted of Conspiracy to Participate in Racketeering Activity, Including the Murder of a 15-Year Old Boy*, United States Attorney's Office for the Northern District of Indiana, May 30, 2018.

*Warsaw, Indiana Man Sentenced for Possessing a Firearm After a Felony Conviction*, United States Attorney's Office for the Northern District of Indiana, May 24, 2018.

*South Bend, Indiana Man Sentenced for Brandishing a Firearm During a Crime of Violence*, United States Attorney's Office for the Northern District of Indiana, May 24, 2018.

*Mishawaka Man Convicted for Robbery*, United States Attorney's Office for the Northern District of Indiana, May 24, 2018.

*Mary Elgin Sentenced to Prison for Public Corruption Charges*, United States Attorney's Office for the Northern District of Indiana, May 24, 2018.

*Hebron Man Sentenced to 78 Months in Prison for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, May 22, 2018.

*Hobart Women Convicted After 5-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, May 20, 2018.

*South Bend, Indiana Man Sentenced for Distribution of Cocaine* United States Attorney's Office for the Northern District of Indiana, May 16, 2018.

*Whiting Woman Sentenced for Bank Fraud*, United States Attorney's Office for the Northern District of Indiana, May 11, 2018.

*Attorney General Sessions and U.S. Attorney Kirsch Recognize Law Enforcement Service and Sacrifice During National Police Week*, United States Attorney's Office for the Northern District of Indiana, May 10, 2018.

*Middlebury Man Convicted for Firearms Violations*, United States Attorney's Office for the Northern District of Indiana, May 10, 2018.

*South Bend Woman Sentenced for Straw Purchasing Firearms that Ended Up in Chicago*, United States Attorney's Office for the Northern District of Indiana, May 9, 2018.

*Fort Wayne Man Sentenced to 108 Months Imprisonment, Possession Methamphetamine with Intent to Distribute*, United States Attorney's Office for the Northern District of Indiana, May 8, 2018.

*Hammond Woman Charged with Theft of Federal Funds and Tax Evasion*, United States Attorney's Office for the Northern District of Indiana, May 4, 2018.

*South Bend, Indiana, Man Sentenced to 10 Years in Prison for Discharging a Firearm During a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, May 3, 2018.

*Chicago Man Sentenced for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, April 27, 2018.

*St. John Man Sentenced to Five Years in Prison for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, April 24, 2018.

*Hammond Man Who Advertised Minors for Sex on Backpage.com Sentenced to Life in Prison*, United States Attorney's Office for the Northern District of Indiana, April 24, 2018.

*Dyer Man Sentenced to 150 Months in Prison for Accessing Child Pornography*, United States Attorney's Office for the Northern District of Indiana, April 23, 2018.

*East Chicago Woman Sentenced to 204 Months Imprisonment for Sex Trafficking Minors and an Adult Female by Fraud and Coercion*, United States Attorney's Office for the Northern District of Indiana, April 20, 2018.

*Former Deputy Chief of Lake County Sheriff's Department Indicted for Making False Statements*, United States Attorney's Office for the Northern District of Indiana, April 20, 2018.

*Hammond Man Sentenced to 108 Months in Prison for Conspiracy to Commit Racketeering*, United States Attorney's Office for the Northern District of Indiana, April 19, 2018.

*Mishawaka Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, April 17, 2018.

*Gary Woman Convicted After Two Week Jury Trial for Conspiracy to Commit Wire Fraud and Conspiracy to Commit Honest Services Wire Fraud*, United States Attorney's Office for the Northern District of Indiana, April 17, 2018.

*LaPorte Man Charged with Production of Child Pornography and Making and Possession of Destructive Devices*, United States Attorney's Office for the Northern District of Indiana, April 16, 2018.

*Gary Man Sentenced to 63 Months in Prison for Heroin Distribution*, United States Attorney's Office for the Northern District of Indiana, April 13, 2018.

*Jose C. Pena Sentenced for Distribution of Cocaine*, United States Attorney's Office for the Northern District of Indiana, April 6, 2018.

*Tennessee Man Sentenced for Being a Felon in Possession of a Firearm and Possession of a Firearm in Relation to a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, April 3, 2018.

*U.S. Steel Corporation Agrees to Improve Environmental Compliance at Indiana Facility, Pay Civil Penalty, and Reimburse U.S. for Response Costs and Damages for Toxic Chromium Spill*, United States Attorney's Office for the Northern District of Indiana, April 2, 2018.

*East Chicago Man Sentenced to 240 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, April 2, 2018.

*South Bend Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, April 2, 2018.

*Chicago Man Sentenced to 70 Month in Prison*, United States Attorney's Office for the Northern District of Indiana, March 27, 2018.

*Gary Man Sentenced to 57 Months in Prison for Wire Fraud and Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, March 26, 2018.

*Indianapolis Man Sentenced to 195 Months Imprisonment for Drugs and Gun Charges*, United States Attorney's Office for the Northern District of Indiana, March 26, 2018.

*Georgia Man Sentenced to 228 Months Imprisonment for Drugs and Gun Charges*, United States Attorney's Office for the Northern District of Indiana, March 22, 2018.

*Illinois Man Convicted After Jury Trial for Presenting a False Claim to the Government and Theft of Government Money*, United States Attorney's Office for the Northern District of Indiana, March 22, 2018.

*Former Social Security Employee Sentenced*, United States Attorney's Office for the Northern District of Indiana, March 15, 2018.

*Michigan City, Indiana Man Sentenced for Conspiracy to Distribute Over 100 Grams of Heroin*, United States Attorney's Office for the Northern District of Indiana, March 8, 2018.

*Rome City Man Sentenced to 180 Months Imprisonment for Being a Felon in Possession and Armed Career Criminal*, United States Attorney's Office for the Northern District of Indiana, March 8, 2018.

*Rochester, Indiana Man Sentenced for Possession of Methamphetamine with Intent to Deliver*, United States Attorney's Office for the Northern District of Indiana, March 7, 2018.

*Fort Wayne Man Charged with Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, March 1, 2018.

*Michigan City Man Sentenced for Being a Felon in Possession of a Firearm/Armed Career Criminal*, United States Attorney's Office for the Northern District of Indiana, March 1, 2018.

*South Bend Man Charged with Possession of a Destructive Device*, United States Attorney's Office for the Northern District of Indiana, February 28, 2018.

*Four Latin Dragon Nation Members Indicted for RICO Conspiracy Involving Two Murders and Other Shootings in Northwest Indiana and Chicago Area*, United States Attorney's Office for the Northern District of Indiana, February 27, 2018.

*Indianapolis Man Sentenced to 120 Months in Prison for Distribution of Heroin*, United States Attorney's Office for the Northern District of Indiana, February 27, 2018.

*Fort Wayne Man Sentenced to 180 Months Imprisonment for Being a Felon in Possession and Armed Career Criminal*, United States Attorney's Office for the Northern District of Indiana, February 27, 2018.

*Fort Wayne Man Sentenced to 120 Months Imprisonment for Conspiracy to Distribute Cocaine*, United States Attorney's Office for the Northern District of Indiana, February 26, 2018.

*Nine Charged with Conspiracy to Distribute Cocaine; Four Individuals Charged with Two Murders Related to Narcotics Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 23, 2018.

*Former Mortgage Broker Sentenced to 14 Months in Prison for His Role in a Bank Fraud Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 23, 2018.

*Justice Department Coordinates Nationwide Elder Fraud Sweep of More Than 250 Defendants*, United States Attorney's Office for the Northern District of Indiana, February 22, 2018.

*Hammond Man Sentenced to 70 Months Imprisonment for Racketeering Conspiracy*, United States Attorney's Office for the Northern District of Indiana, February 15, 2018.

*Elkhart Man Charged by Complaint with Possession of a Destructive Device*, United States Attorney's Office for the Northern District of Indiana, February 15, 2018.

*Hammond Woman Sentenced to 70 Months Imprisonment in Identity Theft Scheme*, United States Attorney's Office for the Northern District of Indiana, February 15, 2018.

*South Bend Man Sentenced to 51 Months in Prison for Being a Felon in Possession*, United States Attorney's Office for the Northern District of Indiana, February 14, 2018.

*South Bend Woman Sentenced to 120 Months in Prison for Transporting a Minor for Sexual Activity*, United States Attorney's Office for the Northern District of Indiana, February 14, 2018.

*Netherlands Man Sentenced for Aggravated Identity Theft*, United States Attorney's Office for the Northern District of Indiana, February 13, 2018.

*Elkhart Man Sentenced to 84 Months in Prison*, United States Attorney's Office for the Northern District of Indiana, February 13, 2018.

*Gary Man Sentenced to 57 Months Imprisonment for Distribution of Heroin*, United States Attorney's Office for the Northern District of Indiana, February 6, 2018.

*Pennsylvania Firearms Dealer Sentenced to 100 Months Imprisonment*, United States Attorney's Office for the Northern District of Indiana, February 5, 2018.

*Fort Wayne Man Sentenced to 120 Months Imprisonment for Conspiracy to Distribute Marijuana*, United States Attorney's Office for the Northern District of Indiana, February 2, 2018.

*South Bend Man Sentenced to 60 Months Imprisonment for Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, February 2, 2018.

*Elkhart Man Sentenced for Receipt of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, February 1, 2018.

*Peru Man Sentenced to 30 Months Imprisonment for Theft of Government Property*, United States Attorney's Office for the Northern District of Indiana, January 30, 2018.

*Elkhart Man Sentenced to 188 Months Imprisonment for Conspiracy to Distribute Cocaine*, United States Attorney's Office for the Northern District of Indiana, January 29, 2018.

*Chicago Heights Man Sentenced to 276 Months Imprisonment for Racketeering Activity*, United States Attorney's Office for the Northern District of Indiana, January 25, 2018.

*Ivan Reyes Charged with the Murders of Lauren Calvillo and Christopher White*, United States Attorney's Office for the Northern District of Indiana, January 25, 2018.

*The United States and Indiana Reach Agreement with Suncoke Energy and Cokenergy to Resolve Clean Air Act Violation at Indiana Harbor Coke Plant*, United States Attorney's Office for the Northern District of Indiana, January 25, 2018.

*Munster Doctor Indicted for Dispensing Opioids Outside the Scope of Professional Practice*, United States Attorney's Office for the Northern District of Indiana, January 23, 2018.

*Hobart Man Sentenced to 447 Months Imprisonment for Enticement of a Minor*, United States Attorney's Office for the Northern District of Indiana, January 18, 2018.

*Valparaiso Man Sentenced to 60 Months Imprisonment for Possession of a Stolen Firearm*, United States Attorney's Office for the Northern District of Indiana, January 18, 2018.

*Crown Point Man Sentenced for Identify Theft*, United States Attorney's Office for the Northern District of Indiana, January 18, 2018.

*Former Lake County Sheriff Sentenced to Over 15 Years in Prison*, United States Attorney's Office for the Northern District of Indiana, January 16, 2018.

*Terre Haute Man Charged with Hobbs Act Robberies*, United States Attorney's Office for the Northern District of Indiana, January 11, 2018.

*Former Saint John, Indiana Resident Charged with Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, January 10, 2018.

*South Bend Man Sentenced for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, January 10, 2018.

*South Bend Man Sentenced for Possession of Heroin and Possession of a Firearm During a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, January 10, 2018.

*Schererville Man Sentenced to 70 Months Imprisonment for Soliciting a Minor to Be Transported Across State Lines for Prostitution*, United States Attorney's Office for the Northern District of Indiana, January 4, 2018.

*Illinois Men Indicted for Possession with Intent to Deliver More Than One Kilogram of Heroin*, United States Attorney's Office for the Northern District of Indiana, January 4, 2018.

*Medicaid Fraud Complaint Filed Against Former Physicians and Their Business Entities for Filing False Claims*, United States Attorney's Office for the Northern District of Indiana, December 29, 2017.

*Fort Wayne Man Charged with Bank Robbery*, United States Attorney's Office for the Northern District of Indiana, December 18, 2017.

*Fort Wayne Man Sentenced to 74 Months for Sex Trafficking of Children*, United States Attorney's Office for the Northern District of Indiana, December 15, 2017.

*Gary Man Convicted During 3-Day Jury Trial of Bank Robberies*, United States Attorney's Office for the Northern District of Indiana, December 14, 2017.

*Osceola Man Sentenced to 102 Months Imprisonment for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 14, 2017.

*Merrillville Woman Convicted During 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, December 13, 2017.

*Lafayette Man Convicted During 2-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, December 12, 2017.

*Michigan Man Sentenced for Being a Felon in Possession of a Fireman*, United States Attorney's Office for the Northern District of Indiana, December 8, 2017.

*Merrillville Man Sentenced for Possession with Intent to Distribute a Controlled Substance*, United States Attorney's Office for the Northern District of Indiana, December 8, 2017.



*Hammond Man Sentenced for Conspiracy to Distribute Cocaine and Crack Cocaine and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, December 8, 2017.

*Schererville Man Sentenced for Filing False Claims and Identity Theft*, United States Attorney's Office for the Northern District of Indiana, December 8, 2017.

*East Chicago Man Sentenced for Possession with Intent to Distribute Crack and Possession of a Firearm in Furtherance of a Drug Trafficking Crime*, United States Attorney's Office for the Northern District of Indiana, December 6, 2017.

*Former Attorney Sentenced for Mail Fraud*, United States Attorney's Office for the Northern District of Indiana, December 5, 2017.

*Illinois Man Sentenced to 46 Months for Filing False Claims*, United States Attorney's Office for the Northern District of Indiana, December 4, 2017.

*South Bend Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, December 4, 2017.

*Fort Wayne Man Sentenced to 57 Months for Possession with Intent to Distribute Heroin*, United States Attorney's Office for the Northern District of Indiana, November 28, 2017.

*Chicago Man Sentenced to 60 Months for Heroin Distribution*, United States Attorney's Office for the Northern District of Indiana, November 27, 2017.

*Rolling Prairie Man Sentenced for Hobbs Act Robberies*, United States Attorney's Office for the Northern District of Indiana, November 22, 2017.

*Fort Wayne Man Sentenced to 324 Months for Distribution of Heroin and Possession of a Firearm by An Illegal Alien*, United States Attorney's Office for the Northern District of Indiana, November 21, 2017.

*Illinois Man Sentenced to 61 Months for Identity Theft*, United States Attorney's Office for the Northern District of Indiana, November 21, 2017.

*Justice Department Awards \$98 Million to Hire Community Policing Officers*, United States Attorney's Office for the Northern District of Indiana, November 21, 2017.

*Michigan City Man Sentenced for Distributing Heroin*, United States Attorney's Office for the Northern District of Indiana, November 21, 2017.

*Winona Lake Man Charged with Drug and Gun Offenses*, United States Attorney's Office for the Northern District of Indiana, November 20, 2017.

*Former Merrillville Town Councilman Indicted for Bribery in Connection with the Town's Towing Contract*, United States Attorney's Office for the Northern District of Indiana, November 17, 2017.

*LaPorte County Man Sentenced for Armed Robbery*, United States Attorney's Office for the Northern District of Indiana, November 16, 2017.

*Logansport Man Sentenced for Being a Felon in Possession of a Firearm*, United States Attorney's Office for the Northern District of Indiana, November 9, 2017.

*Munster Man Indicted in East Chicago Post Office Bombing Case*, United States Attorney's Office for the Northern District of Indiana, November 9, 2017.

*South Bend Man Indicted for Hobbs Act Robbery*, United States Attorney's Office for the Northern District of Indiana, November 9, 2017.

*Chicago Man Sentenced to 30 Months for Straw Purchasing Firearms*, United States Attorney's Office for the Northern District of Indiana, November 3, 2017.

*South Bend Woman Convicted During 4-Day Jury Trial*, United States Attorney's Office for the Northern District of Indiana, November 2, 2017.

*Valparaiso Man Sentenced to 78 Months for Possession of Child Pornography*, United States Attorney's Office for the Northern District of Indiana, October 27, 2017.

*Gary Man Entered a Guilty Plea of Conspiracy to Racketeering*, United States Attorney's Office for the Northern District of Indiana, October 26, 2017.

*South Bend Man Charged with Drug Crimes*, United States Attorney's Office for the Northern District of Indiana, October 26, 2017.

*South Bend/Mishawaka Men Indicted for Drug Distribution Conspiracy*, United States Attorney's Office for the Northern District of Indiana, October 13, 2017.

*Munster Man Charged with Possession of a Destructive Device and Transporting Explosive Material*, United States Attorney's Office for the Northern District of Indiana, October 12, 2017.

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Giles Bruce, *Kirsch's Next Target: Opioids; U.S. Attorney's Office in Hammond Ramping Up Efforts*, Times (Munster), May 7, 2018. Copy supplied.

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*Businessman, Fundraiser Gives Up Bid to Remain Free*, McDonough County Voice, Nov. 14, 2012. Copy supplied.

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

I have never held judicial office.

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

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_%

bench trials: \_\_\_\_\_%

civil proceedings: \_\_\_\_\_%

criminal proceedings: \_\_\_\_\_%

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

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

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have never held judicial office.

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

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

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

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

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

2017 – present: United States Attorney for the Northern District of Indiana. I was appointed by the President and confirmed by the Senate in 2017.

- 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 been a candidate for any elective public office, nor rendered service to any political party or election committee.

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

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

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

I served as a law clerk to the Honorable John Daniel Tinder, U.S. District Court, Southern District of Indiana, from 2000 to 2001.

- 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;

1999 – 2000  
Jenner & Block



353 North Clark Street  
Chicago, Illinois 60654  
Associate Attorney

2001 – 2008  
United States Attorney's Office  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
Assistant United States Attorney

2006 – 2007  
United States Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Counsel to the Assistant Attorney General  
(On detail from the United States Attorney's Office)

2008 – 2017  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
Partner

2017 – present  
United States Attorney's Office  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
United States Attorney

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

I have never served as a mediator or arbitrator.

b. Describe:

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

After graduating from law school in 1999, I started my legal career as a litigation associate at Jenner & Block working on various business disputes. After one year at Jenner & Block, I clerked for the Hon. John D. Tinder from 2000 to 2001.

Following my clerkship, from 2001 to 2008, I joined the United States Attorney's Office in Hammond, Indiana, as an Assistant United States Attorney in the Criminal Division. I represented the United States in criminal prosecutions in the Northern District of Indiana and the U.S. Court of Appeals for the Seventh Circuit. As an Assistant United States Attorney, I worked on dozens of cases in areas such as white collar crime, gangs and narcotics, conspiracy, extortion, money laundering, and firearms offenses. I tried approximately a dozen cases to a jury as the first chair trial lawyer.

While I was serving as an Assistant United States Attorney, I spent one year on detail at the Department of Justice Office of Legal Policy in Washington, D.C. While at the Office of Legal Policy, I assisted in developing legislative and policy proposals in corporate crime violent crime, and counter-terrorism. I also worked on federal nominations.

From 2008 to 2017, I worked at Winston & Strawn. My legal practice there focused on complex commercial litigation, corporate internal investigations, white collar criminal defense, securities litigation, regulatory defense, and appeals and critical motions. I handled a variety of commercial and white collar criminal matters in each phase of litigation, through and including jury trials and appeals in trial and appellate courts across the United States. I tried cases in federal courts in Indiana, Illinois, Wisconsin, Michigan, New York, and Colorado. I handled and argued federal appeals in the U.S. Court of Appeals for the Seventh, Third, and Tenth Circuits. I conducted large corporate internal investigations that were national in scope for several national and multi-national companies. In addition, I handled several government and regulatory matters, including investigations and prosecutions brought by the U.S. Department of Justice, U.S. Attorneys, and state prosecutors; Securities and Exchange Commission actions and investigations; Federal Trade Commission investigations and litigation; Foreign Corrupt Practices Act (FCPA) matters (initiated by both the DOJ and the SEC); and *qui tam* litigation.

From October 2017 to the present, I have served as the United States Attorney for the Northern District of Indiana, where I am the chief law enforcement officer for my region. I represent the United States Government in criminal and civil cases in the United States District Court for the Northern District of Indiana and the United States Court of Appeals for the Seventh Circuit Court of Appeals. My office charges hundreds of cases each year and handles dozens of appeals. I oversee over 40 Assistant United States Attorneys and over 40 support staff in three offices – Hammond, South Bend, and Fort Wayne.

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

As a federal prosecutor, I represent the United States Department of Justice.

As a lawyer in the private practice of law, I represented both business entities and individuals located across the United States in commercial litigation and white collar and regulatory defense. I represented both plaintiffs and defendants, including *pro bono* defendants in civil litigation at the trial court and on appeal.

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

As an Assistant United States Attorney and in the private practice of law, my practice has been 100% litigation. I appeared in court on a very regular and frequent basis. As United States Attorney, I have appeared in court less frequently, but have personally handled several criminal matters and have appeared in court on those matters when required.

- 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: 35%
2. criminal proceedings: 65%

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

I have tried 17 criminal and civil cases to jury verdict in federal district courts in Indiana, Illinois, Wisconsin, Michigan, Colorado, and New York. I served as sole counsel in two cases, chief counsel in ten cases, and associate counsel in five cases. In addition, I have litigated hundreds of contested hearings in state and federal courts in civil and criminal cases. I have also briefed and argued approximately a dozen federal appeals.

- i. What percentage of these trials were:

1. jury: 95%
2. non-jury: 5% (one bench trial)

- 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.

*Petition for a Writ of Certiorari, Kevin M. Trudeau v. United States*, No. 16-37. Copy of brief in support of the Petition for Writ of Certiorari and reply to brief in opposition supplied.

I have not argued before the Supreme Court.

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

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

1. *United States v. Schulte*, No. 1:10-CR-00455 (D. Colo.) (Daniel, J.); 741 F.3d 1141 (10th Cir. 2014) (Kelly, McKay, & O'Brien, JJ.)

John Schulte and several other executives at Spectranetics were charged with importing unapproved medical devices from Japan and Germany and then providing those devices to physicians throughout the United States for use in human patients. The government alleged that Spectranetics was trying to determine whether the devices would be preferred by physicians prior to entering into distribution contracts with the manufacturers of the devices. I was the lead trial lawyer for Schulte. The defense contended that Schulte did not intend to deceive the physicians regarding the approval status of the devices, and instead made the physicians aware that the devices were not yet approved by the FDA, although approval was pending. It was then the physicians' decisions whether to try the devices. At the conclusion of the lengthy trial, Schulte was acquitted of 11 counts and convicted of one count of making a false statement to the FDA, for which he was sentenced to one year probation. His conviction was upheld on appeal, which I argued in the Court of Appeals.

Dates of Representation: 2009 – 2014

Principal Co-Counsel:  
 Matt Lydon  
 Winston & Strawn LLP (retired)  
 35 West Wacker Drive  
 Chicago, Illinois 60601  
 (312) 953-7466

Principal Counsel for Obinna Adighije:  
Robert Blume  
Gibson Dunn & Crutcher LLP  
1801 California Street, Number 4200  
Denver, Colorado 80202  
(303) 298-5700

Principal Counsel for Trung Pham:  
Fredric Winocur  
Ridley McGreevey & Winocur, P.C.  
303 16th Street, Number 200  
Denver, Colorado 80202  
(303) 629-9700

Principal Counsel for Hernan Ricaurte:  
Clifford Stricklin  
Bryan Cave LLP  
1700 Lincoln Street, Suite 4100  
Denver, Colorado 80203  
(303) 866-0372

Principal Opposing Counsel:  
Assistant United States Attorneys Jaime Pena and Tim Neff  
United States Attorney's Office, District of Colorado  
1225 17th Street, Suite 700  
Denver, Colorado 80202  
(303) 454-0100

2. *United States v. Trudeau*, No. 1:10-CR-00886 (N.D. Ill.) (Gettleman, J.); 812 F.3d 578 (7th Cir. 2016) (Easterbrook, Rovner, & Sykes, JJ.), *cert. denied*, 137 S.Ct. 566 (2016).

Kevin Trudeau was charged with criminal contempt of court for violating a consent order prohibiting him from misrepresenting the content of a book in an infomercial promoting the book. The consent order was entered into between Trudeau and the Federal Trade Commission after years of litigation concerning the promotion of his books and other products. I was Trudeau's lead trial lawyer. At trial, Trudeau was convicted of criminal contempt. The conviction was upheld on appeal, which I did not argue. The appeal was argued by another Winston & Strawn lawyer.

I also represented Trudeau in a civil bench trial before Judge Robert Gettleman (Case No. 1:03-cv-03904) in 2013 on the FTC's motion for civil contempt resulting from Trudeau's failure to pay a \$37 million judgment to the FTC.

Dates of Representation: 2010 – 2016

Principal Co-counsel:

Carolyn Gurland  
414 North Clay Street  
Hinsdale, Illinois 60521  
(312) 420-9263

Principal Opposing Counsel:  
Assistant United States Attorney Marc Krickbaum (former)  
United States Attorney's Office  
Southern District of Iowa  
U.S. Courthouse Annex  
110 East Court Avenue, Suite 286  
Des Moines, Iowa 50309

Assistant United States Attorney April Perry (former)  
United States Attorney's Office, Northern District of Illinois  
219 South Dearborn Street, 5th Floor  
Chicago, Illinois 60604  
(312) 353-5300

3. *United States v. Cellini*, 08-CR-00888 (N.D. Ill.) (Zagel, J.).

William Cellini was charged with conspiring to corrupt Illinois state government and attempting to extort a campaign contribution from an award winning Hollywood movie producer. The indictment stemmed from the federal government's eight-year long criminal probe into Illinois state corruption. At trial, the government attempted to prove that Cellini had conspired with government officials to corrupt Illinois state government. Cellini was acquitted of those charges, but convicted of attempted extortion of the movie producer. I was second chair trial lawyer for Cellini. Cellini was sentenced to 1 year and 1 day incarceration and did not appeal his conviction or sentence.

Dates of Representation: 2008 – 2012

Principal Co-Counsel:  
Dan Webb  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
(312) 558-5856

Terence Gillespie  
Gillespie & Gillespie  
53 West Jackson Boulevard, Suite 1062  
Chicago, Illinois 60604  
(312) 588-1284

Principal Opposing Counsel:

Assistant United States Attorney (former) Christopher Niewoehner  
 Steptoe & Johnson LLP (current)  
 115 South LaSalle Street, Suite 3100  
 Chicago, Illinois 60603  
 (312) 577-1240

Assistant United States Attorney (former) Julie Porter  
 Salvatore Prescott & Porter (current)  
 1010 Davis Street  
 Evanston, Illinois 60201  
 (312) 283-5711

Assistant United States Attorney (former) Gregory Deis  
 Mayer Brown LLP (current)  
 71 South Wacker Drive  
 Chicago, Illinois 60606  
 (312) 701-8035

4. *United States v. Ahuja*, No. 2:11-CR-00135 (E.D. Wis.) (Clevert, J.).

Dr. Arvind Ahuja, an endovascular neurosurgeon, was charged with conspiring with HSBC bankers to defraud the IRS, filing false tax returns for tax years 2006 through 2009, and failing to file reports of Foreign Bank and Financial Accounts (“FBARs”) for tax years 2006 through 2009. The government alleged that Dr. Ahuja failed to report \$2.6 million in interest income on nearly \$9 million kept in bank accounts managed by HSBC bankers in India and the United Kingdom, failed to disclose the existence of those accounts to the IRS, and conspired with HSBC bankers in New York and India to hide the existence of the accounts from the IRS. The Court ruled that the government did not offer sufficient evidence to proceed to trial on the conspiracy charge and dismissed another count for lack of evidence at the close of trial. The jury then acquitted Dr. Ahuja of all charges for 2006, 2007, and 2008, convicting only on 2009. I was second chair trial lawyer for Dr. Ahuja. Dr. Ahuja was sentenced to three years of probation and ordered to pay a fine, and did not appeal his conviction or sentence.

Dates of Representation: 2011 – 2013

Principal Co-Counsel:  
 Dan Webb  
 Winston & Strawn LLP  
 35 West Wacker Drive  
 Chicago, Illinois 60601  
 (312) 558-5658

Shannon Allen  
 DeWitt Ross & Stevens  
 13935 Bishop's Drive, Suite 300  
 Brookfield, Wisconsin 53005

(262) 754-2870

Principal Opposing Counsel:  
 Trial Attorneys Melissa Siskind and John Sullivan  
 U.S. Department of Justice Tax Division  
 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-2901

Assistant United States Attorney Tracy Johnson  
 United States Attorney's Office, Eastern District of Wisconsin  
 530 Federal Building  
 517 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202  
 (414) 297-1700

5. *United States v. Suggs*, Nos. 2:01-CR-000098 and 2:02-CR-000044 (N.D. Ind.) (Sharp, J.); 374 F.3d 508 (7th Cir. 2004); 418 F.3d 771 (7th Cir. 2005); 127 Fed.Appx. 894 (7th Cir. 2005) (Bauer, Posner, Ripple, Easterbrook, Kanne, Cudahy, & Rovner, JJ.).

Bobby Suggs, his brother Seantai Suggs, and numerous other Vice Lord gang members were indicted on various drugs and weapons offenses. In addition to distributing huge quantities of illegal drugs throughout Indiana and Chicago, the gang was responsible for numerous violent homicides, including the deaths of two children, aged 1 and 3, who burned to death in the fire-bombing of an apartment rented by their grandmother, who frequently called police to complain about drug and gang activity in the neighborhood that the gang controlled. The lengthy investigation, conducted by the FBI, Secret Service, ATF, DEA, Indiana State Police, and several local police departments, involved telephone wiretaps, search warrants, and the use of confidential informants, one whom risked her life by allowing the FBI to put video and audio cameras in her apartment to capture drug activity occurring within. At trial, the defendants claimed that they were not members of a street gang, but were instead a successful rap music group. In fact, the group had produced a successful album, selling over 50,000 copies and reaching the top of the Billboard music charts. The trial was complicated due to the lack of cooperating defendants and witnesses, who were concerned that they would be killed if they cooperated with the government.

The trials were severed because of the large number of defendants that went to trial. Dilworth, Price, and Davison went to trial in what was the second of three trials. After these defendants were convicted, three additional defendants went to trial in a different venue (South Bend, Indiana). These defendants were lower ranking members of the street gang and argued to the jury that they were not gang members or members of a drug conspiracy. All of the defendants charged were convicted at trial or pled guilty.

I was lead trial counsel for the government in the second and third trials and second chair trial counsel in the first trial. I argued several appeals in the Court of Appeals in connection with this case.



Dates of Representation: 2001 – 2006

Principal Co-Counsel:  
Assistant United States Attorney Joseph Cooley  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
(219) 937-5625

Assistant United States Attorney Gary Bell  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
(219) 937-5656

Assistant United States Attorney (former) Robert Trgovich  
Clerk of U.S. District Court, Northern District of Indiana (current)  
5400 Federal Plaza  
Hammond, Indiana 46320  
(219) 852-6500

Principal Opposing Counsel:  
Counsel for Bobby Suggs:  
(now Judge) David Chidester  
16 East Lincolnway, Number 228  
Valparaiso, Indiana 46383  
(219) 465-3412

Counsel for Seantai Suggs:  
MacArthur Drake  
487 Broadway  
Gary, Indiana 46402  
(219) 882-6004

Counsel for Aaron Davis:  
Paul Stracci  
Stracci Criminal Defense  
9205 Broadway, Suite B  
Merrillville, Indiana 46110  
(219) 525-1000

Counsel for Terence Dilworth:  
Michael Petro  
53 West Jackson Boulevard, Suite 324  
Chicago, Illinois 60604

(312) 913-1111

Counsel for Terraun Price:  
Alexander Woloshansky  
9219 Broadway  
Merrillville, Indiana 46410  
(219) 769-3333

Counsel for William Davison:  
Michael Bosch  
3235 45th Street, Suite 301  
Highland, Indiana 46322  
(219) 972-2000

Counsel for Wiley Johnson:  
Matthew Soliday  
Northern District of Indiana Federal Community Defenders, Inc.  
31 East Sibley Street  
Hammond, Indiana 46320  
(219) 937-8020

Counsel for Columbus Malone:  
David Peilet  
53 West Jackson Boulevard, Suite 1410  
Chicago, Illinois 60604  
(312) 322-0009

Counsel for Anthony George:  
Jeffrey Schlesinger  
8396 Mississippi Street  
Merrillville, Indiana 46410  
(219) 736-5555

6. *United States v. Harris*, No. 2:06-CR-00118 (N.D. Ind.) (Moody, J.); 335 F. App'x. 623 (7th Cir. 2009) (Bauer, Posner, & Tinder, JJ.)

Jewell Harris was a former elected State Representative and mayoral advisor in Gary, Indiana. He was also the owner of a successful trucking and waste hauling company. Harris engaged in a scheme to defraud the city by double-billing the city for work that his company was doing for private parties. Harris engaged in this scheme by using his considerable political influence to force city employees to permit his company to use city weigh scales even when the hauling and waste removal that his company was performing was not being done for the city. Harris then used the weigh tickets that he obtained to invoice the city for hauling and waste removal that was done for private parties, including on excavation and hauling work his company performed on the construction of a minor league baseball stadium in the city. Harris made it appear as if the work being performed was demolition work for the city and not the hauling of excavation

material for private contractors. Harris's company netted several million dollars as a result of his double billing scheme. Harris was convicted of all counts charging mail and wire fraud and money laundering. I was the lead trial counsel for the government. I was not involved in the appeal.

Dates of Representation: 2005 – 2008

Principal Co-Counsel:  
Assistant United States Attorney Bernard Van Wormer (retired)

Principal Opposing Counsel:  
Kevin Milner  
1201 North Main Street, Suite A  
Crown Point, Indiana 46307  
(219) 406-0556

7. *United States v. White*, No. 2:05-CR-00079 (N.D. Ind.) (Lozano, J.); 472 F.3d 458 (7th Cir. 2006) (Easterbook, Kanne, & Sykes, JJ.).

Robert White was an elected city councilman in Gary, Indiana at the time of his indictment and conviction. White engineered a no-bid contract for services to be awarded by the city to a business purportedly owned and run by his nephew. White enlisted the city parks department and his nephew in securing the contract, which was proposed to the park board as an emergency contract to bypass Indiana bid requirements. In truth, the business to which the contract was awarded existed on paper only, the contract price for the work that was to be performed was greatly inflated, and the work was never completed. Nevertheless, White's nephew submitted an invoice for the full amount of the contract to the city, and White saw to it that the invoice was paid in full. White's nephew then directed all of the payments on the contract to White. I was the lead trial lawyer for the government. I did not argue the appeal.

Dates of Representation: 2004 – 2006

Principal Co-Counsel:  
Assistant United States Attorney Bernard Van Wormer (retired)

Principal Opposing Counsel:  
Frederick Work (deceased)

8. *United States v. Carter*, No. 2:04-CR-00104 (N.D. Ind.) (Lozano, J.); 530 F.3d 565 (7th Cir. 2008) (Flaum, Rovner, & Sykes, JJ.).

Morris Carter was the elected Lake County, Indiana Recorder at the time of his indictment and conviction. Carter was convicted of extortion under color of official right for extorting bribe payments from contractors doing business with his office in exchange for official acts, including falsifying licensing examinations, purging liens, and selling non-public official documents regarding properties being sold by the county at tax sale auctions in order to allow certain

bidders on those properties an advantage over all other bidders at auction. Jan Allison, who pleaded guilty before trial, was responsible for administering and grading examinations that building contractors were required to pass. Carter and Allison devised a scheme to obtain money from contractors who had failed the examination in exchange for a building license. I was the sole trial lawyer for the government. I did not argue the appeal.

Dates of Representation: 2003 – 2008

Principal Opposing Counsel:  
Darnail Lyles (for Morris Carter)  
5528 Melton Road  
Gary, Indiana 46401  
(219) 939-9529

Hon. John Martin (for Jan Allison)  
U.S. District Court for the Northern District of Indiana  
5400 Federal Plaza  
Hammond, Indiana 46320  
(219) 852-6610

9. *Altria Group, Inc. v. United States*, No. 1:06-cv-09430 (S.D.N.Y.) (Holwell, J.).

Altria Group sued the United States to recover hundreds of millions of dollars in tax deductions disallowed by the IRS. The tax deductions were the result of lease-in sale-out (LILO) and sale-in sale-out (SILO) transactions. LILO and SILO transactions were used by companies all across America to reduce their tax liabilities. The IRS denied the deductions, taking the position that the transactions were illegitimate and engaged in for the sole purpose of purchasing tax credits. Altria, and the industry, argued that the transactions were legitimate because Altria became the true owner of the purchased assets and retained the risk that at the end of the lease back term, the asset would lose its value. I was a trial lawyer for Altria. Winston & Strawn was not involved in any appeals.

Dates of Representation: 2008 – 2009

Principal Co-Counsel:  
Dan Webb, Julie Bauer  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
(312) 558-5856

Principal Opposing Counsel:  
Assistant United States Attorneys David Kennedy, Lawrence Fogelman, and Robert Yalen  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street

New York, New York 10007  
(212) 637-2800

10. *United States v. Hendricks*, No. 2:01-CR-00105 (N.D. Ind.) (Moody, J.); 319 F.3d 993 (7th Cir. 2003) (Easterbrook, Manion, Ripple, JJ.).

James Hendricks was indicted for a weapons violation and charged as an armed career criminal. Prior to his federal indictment, Hendricks had been charged with numerous armed robberies and with attempted murder. Hendricks was arrested in the early morning hours using a pay phone near a closed business. His girlfriend's car was parked nearby with her in it. Also in the car was a handgun, which Hendricks was prohibited from possessing due to his prior felony convictions. At trial, Hendricks testified on his behalf and called his girlfriend as a defense witness to argue that the gun in the car did not belong to Hendricks, and that he never possessed it. Hendricks was convicted at trial. I served as lead trial lawyer for the government and argued the appeal in the Court of Appeals.

Dates of Representation: 2001 – 2003

Principal Co-Counsel:  
Assistant United States Attorney Nick Padilla  
Northern District of Indiana  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
(219) 937-5600

Principal Opposing Counsel:  
Daniel Toomey, Federal Community Defenders Inc. (deceased)

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

While practicing law at Winston & Strawn, as lead counsel, I represented numerous companies and individuals in regulatory matters before the SEC, including matters in which the Department of Justice initiated parallel criminal and/or civil investigations. Many of these matters are confidential because they resulted in no action against my client. For instance, from 2013 to 2015 I represented an international firm and one of its most prominent senior members in an SEC insider trading investigation. The SEC investigated the matter for almost two years before accepting my arguments that insider trading had not occurred. During the course of this matter, I conducted a thorough investigation, submitted several position papers to the SEC, and met with senior SEC officials in New York.

As an Assistant United States Attorney in the Northern District of Indiana I was a lead prosecutor on a public corruption task force. I was the lead prosecutor on several high profile public corruption prosecutions that did not go to trial. For instance, I prosecuted Gerry Nannenga (Indiana Carpenter's Union Executive Director), Peter Manous (attorney for the union), and Kevin Pastrick (prominent real estate agent) for conspiracy to commit labor racketeering, labor racketeering, obstruction of justice, and lying to federal agents for illegally profiting from a \$10 million land investment by the carpenters union pension fund. The carpenters union decided to make the risky land investment at Nannenga's urging despite reports that the value of the land was far less than the selling price. Pastrick was the real estate selling agent and earned a \$600,000 commission on the sale of the land. Pastrick then used his commission payment to make bribe payments to Manous, and then the two made illegal bribe payments to Nannenga. The conspirators attempted to disguise the bribe payments by attempting to make it appear that Pastrick's real estate company had hired a company purportedly owned by Manous's father to do real estate investment and research work. Manous's father then purportedly engaged Nannenga's wife as a sub-contractor. The defendants then fabricated documents to make it appear that the company was an actual business producing a legitimate work product, when, in reality, it was merely an account utilized to transfer funds from Pastrick and Manous to Nannenga. After it was conclusively proved that the documents were false and that numerous witnesses lied to the grand jury, Nannenga, Manous, and Pastrick all pleaded guilty to various federal crimes. The complex scheme and subsequent cover-up, including the falsification of documents, lying to federal agents, and perjury before the grand jury, including by Pastrick's business partner Paul Ihle, who was subsequently convicted at trial of obstruction of justice, grand jury perjury, and making materially false statements to a federal agent.

I also prosecuted Gregory Cvitkovich, an elected public official in charge of managing numerous government assistance programs, and James Fife, the special assistant to the mayor of East Chicago, Indiana, for numerous tax offenses. Both plead guilty.

Cvitkovich illegally deducted payments made to a city official through Cvitkovich's consulting and heavy equipment leasing company. The purpose of the payments was to facilitate a contract between an associate of Cvitkovich and the City of East Chicago, Indiana. Cvitkovich's associate paid hundreds of thousands of dollars to Cvitkovich's company purportedly for legitimate business purposes. But, the payments were funneled through Cvitkovich's company to the city official. Cvitkovich tried to conceal the true nature of the payments by falsely describing them as legitimate business office expenses on his corporate tax returns.

Fife used four sham entities he set up using nominee ownership to hide over \$750,000 in fees he had received from the city. These fees were in addition to the considerable salary he received from the city. Krahn-Fife, Fife's girlfriend and then wife, set up a separate sham company for the purpose of diverting income paid to Fife's companies in an effort to further hide the income from the IRS. Fife and his wife received an additional \$135,000 from an elected official that they did not report on their returns. The government argued that these payments were bribe payments to Fife. Fife and his wife hid income from their sham entities from their accountants; failed to file tax returns for these entities; and moved

large sums of money through and amongst the entities to disguise the income. Fife and his entities realized over \$1.4 million in East Chicago-related fees and failed to report at least \$807,509 earned during the four year period.

I have performed no 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.

Introduction to Trial Advocacy: A Workshop on Skills and Responsibilities, Northwestern University School of Law (2010 to 2016). I do not have a syllabus.

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

No.

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).

When my nomination is formally transmitted to the Senate, I will file my financial disclosure report as required by the Ethics in Government Act of 1978 and supply a copy to this Committee.

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

Because of my position of United States Attorney, I will recuse myself from all criminal matters that arose, were filed, and/or are pending during my term in office. With respect to these and other matters, I will comply with the Code of Conduct for United States Judges and applicable statutes, including 28 U.S.C. § 455. I will also be guided by Supreme Court and Seventh Circuit precedent, procedures, and policies.

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

I will comply with the Code of Conduct for United States Judges and applicable statutes, including 28 U.S.C. § 455. I will also be guided by Supreme Court and Seventh Circuit precedent, procedures, and policies.

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 work load, 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 worked on numerous civil and criminal trial and appellate pro bono matters since entering the private practice of law. I have represented both plaintiffs and defendants and appellants and appellees. I represented the appellant in a civil appeal in the United States Court of Appeals for the Third Circuit (*Sides v. Cherry, et al.*) and the appellee in a criminal appeal in the United States Court of Appeals for the Seventh Circuit (*United States v. Trudeau*). I have participated in Winston & Strawn's mentoring program. I also served multiple terms on the Magistrate Judge Merit Selection Panel for the Northern District of Indiana, and have served on the boards of two charities and a non-profit community hospital. I spent approximately 400 billable hours working on these matters while in private practice.

26. **Selection Process:**

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



I am unaware of any judicial selection commission in my jurisdiction. I was contacted by the White House Counsel's Office about interviewing for a potential vacancy on the U.S. Court of Appeals for the Seventh Circuit. On October 1, 2020, I interviewed with individuals from the White House Counsel's Office and the U.S. Department of Justice. Since that time, I have had contact with members from the White House Counsel's Office and the Department of Justice.

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.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		56	100	Notes payable to banks-secured		30	000
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule	2	268	900	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable—see schedule	1	230	300
Real estate owned—see schedule	2	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		130	000				
Cash value-life insurance							
Other assets itemize:							
TSP Funds		452	100				
College Choice 529 2024 Enrolled Portfolio		50	800				
College Choice 529 2027 Enrolled Portfolio		23	000	Total Liabilities	1	260	300
				Net Worth	4	220	600
Total Assets	5	480	900	Total Liabilities and Net Worth	5	480	900
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			No
On leases or contracts				Are you defendant in any suits or legal actions?			No
Legal Claims				Have you ever taken bankruptcy?			No
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

MUB (iShares National Muni Bond ETF)	\$ 18,400
HYD (VanEck Vectors High Yield Muni ETF)	\$ 6,100
AA	\$ 100
ARNC	\$ 200
BMJ	\$ 8,400
BP	\$ 11,300
CMCSA	\$ 2,600
FE	\$ 5,100
HWN	\$ 700
JPM	\$ 18,700
MSFT	\$ 60,400
MT	\$ 1,300
PFE	\$ 15,800
QQQ	\$ 15,700
SO	\$ 9,400
T	\$ 6,900
VZ	\$ 21,500
DXC	\$ 100
HPE	\$ 1,700
HPQ	\$ 1,700
JWN	\$ 3,800
MFGP	\$ 100
PRSP	\$ 100
SCHW	\$ 7,000
AEP	\$ 21,600
COP	\$ 3,700
CHTR	\$ 2,500
INTC	\$ 8,500
MRO	\$ 900
PSX	\$ 5,800
CSCO	\$ 7,900
NI	\$ 58,600
VTTWX	\$ 295,300
VIRSX	\$ 103,000
VITFX	\$ 700,500
VITVX	\$ 13,500
FGCKX	\$ 52,000
CIPIX	\$ 13,000
FXAIX	\$ 83,600
FSPSX	\$ 2,000
EWJ	\$ 6,300
EWI	\$ 2,100

320

EPP	\$ 2,000
VGK	\$ 15,900
FIQZX	\$ 50,200
PHIYX	\$ 12,200
VWIUX	\$ 16,100
VMLUX	\$ 12,300
OEF	\$ 112,400
VOO	\$ 113,700
IWR	\$ 125,300
VB	\$ 76,600
IEFA	\$ 109,200
IEMG	\$ 19,000
BIL	\$ 6100
VITWX	0*
VMFXX	0*
Total Listed Securities	\$ 2,268,900

\*Though I own these securities, their value is nominal.

<u>Real Estate Owned</u>	
Personal Residence #1	\$ 1,700,000
Personal Residence #2	<u>\$ 800,000</u>
Total Real Estate Owned	\$ 2,500,000

<u>Real Estate Mortgages Payable</u>	
Personal Residence	<u>\$ 1,230,300</u>
Total Real Estate Mortgages Payable	\$ 1,230,300

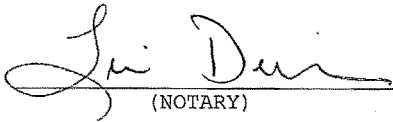
AFFIDAVIT

Thomas Lee Kirsch II  
I, \_\_\_\_\_, do swear that the  
information provided in this statement is, to the best of my  
knowledge, true and accurate.

October 21, 2020

\_\_\_\_\_  
(DATE)  
TINA LALONDE-DURON  
Notary Public, State of Indiana  
SEAL  
My Commission Expires 11/21/2021

  
\_\_\_\_\_  
(NAME)

  
\_\_\_\_\_  
(NOTARY)

**Nomination of Thomas Lee Kirsch II to the United States Court of Appeals for the Seventh Circuit**  
**Questions for the Record**  
**Submitted November 25, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1) You were recently quoted as saying that the Department of Justice will “always act appropriately to protect the integrity of the election process.” (*Assistant U.S. Attorney Appointed to Oversee Election Day Voting Complaints, Concerns*, THE TIMES (Oct. 20, 2020))

- a) **What did you mean when you said that DOJ would “always act appropriately to protect the integrity of the election process?”**

As the United States Attorney for Northern Indiana, I meant that my office, working with our federal, state, and local law enforcement partners, would act appropriately consistent with applicable federal law to protect the integrity of the election process in Northern Indiana.

- b) **Is it “appropriate” for election officials to cast doubt on election results with no evidence to support their claims?**

As the United States Attorney for Northern Indiana and as a judicial nominee, it would not be appropriate for me to comment on or offer my personal opinion on remarks or actions of any election officials, other than to acknowledge their obligation to follow the law.

- 2) In April 2020, you stated that DOJ was taking a “proactive” approach to ensuring inmate safety in the midst of the COVID-19 pandemic. (Virtual Press Conference, U.S. Attorney’s Office (Apr. 28, 2020); SJQ Attachment 12(d) at p. 107)

- a) **What “proactive” measures were you referring to?**

Among other measures, I was referring to the Attorney General’s March 26, 2020, Memorandum for the Director of the Bureau of Prisons on the prioritization of home confinement as appropriate in response to the COVID-19 pandemic.

- b) **Are you aware that, according to Federal Bureau of Prisons data, 143 federal inmates and two BOP staff members have died of COVID-19?**

I am aware of the data reported by the Bureau of Prisons.

- c) **Are there any other measures you believe DOJ and BOP could take to keep inmates and prison staff safe?**

As the United States Attorney for Northern Indiana, I am not aware of all of the measures taken by the many components of the Department of Justice and the Bureau of Prisons to keep inmates and prison staff safe during the COVID-19 pandemic. I am therefore unable to offer my opinion on what additional measures could have been taken.

3) Please respond with your views on the proper application of precedent by judges.

**a) When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

It is never appropriate for a lower court to depart from Supreme Court precedent. *See, e.g., Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other lines of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decision.”).

**b) Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

Please see my response to Question 3(a). It may be appropriate for a circuit judge to identify areas in which Supreme Court cases appear to be inconsistent or in conflict. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (noting that a circuit judge had aptly described an earlier case’s inconsistencies with later jurisprudence).

**c) When, in your view, is it appropriate for a circuit court to overturn its own precedent?**

The Seventh Circuit may overturn its own precedent by following the procedures in Circuit Rule 40(e) or by sitting en banc. *See* Cir. R. 40(e) (“A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted.”); *Mojica v. Gannett Co.*, 7 F.3d 552, 557 (7th Cir. 1993) (“When sitting *en banc*, the full court has the power to change general rules stated in previous cases.”). Revisiting a prior decision through an en banc hearing is “not favored and ordinarily will not be ordered unless (1) en banc consideration is necessary to secure and maintain uniformity in the court’s decisions; or (2) the proceeding involves a question of exceptional importance.” Fed. R. App. P. 35(a).

**d) When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

As a nominee to a lower court, it would be inappropriate for me to comment on when the Supreme Court should overturn its own precedent.

- 4) When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of the Roe case law as “super-stare decisis.” One text book on the law of judicial precedent, co-authored by Justice Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, THOMAS WEST, p. 802 (2016)) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, THOMAS WEST, p. 802 (2016))

a) **Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?**

*Roe v. Wade* has survived challenges and is binding Supreme Court precedent that I would faithfully apply if confirmed.

b) **Is it settled law?**

*Roe v. Wade* is binding Supreme Court precedent, and I would follow it if confirmed.

- 5) In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

*Obergefell v. Hodges* is binding Supreme Court precedent that I would follow if confirmed.

- 6) In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

a) **Do you agree with Justice Stevens? Why or why not?**

*District of Columbia v. Heller* is binding Supreme Court precedent that I would follow if confirmed. As a judicial nominee, it would be inappropriate for me to offer any personal view on any Supreme Court opinion, including any opinion of a particular Justice.

b) **Did *Heller* leave room for common-sense gun regulation?**

In *Heller*, the Court held that the “right secured by the Second Amendment is not unlimited” and, although “not undertak[ing] an exhaustive historical analysis today in the full scope of the Second Amendment, nothing in [the Court’s] opinion should be taken to



cast doubt on the 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.” 554 U.S. 570, 626-27 (2008).

**c) Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

The majority and dissenting opinions in *Heller* discussed the scope of applicability of the Court’s prior decisions interpreting the Second Amendment. Please also see my response to Question 6(a) above.

- 7) In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations’ independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a) Do you believe that corporations have First Amendment rights that are equal to individuals’ First Amendment rights?**

In *Citizens United*, the Supreme Court held that, “First Amendment protection extends to corporations.” 558 U.S. 310, 342 (2010). If confirmed, I would apply *Citizens United* and all other Supreme Court precedents. As a judicial nominee, it would be inappropriate for me to comment on issues that are or could be the subject of impending or impending litigation.

**b) Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my response to Question 7(a) above.

**c) Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that certain corporations could assert claims under the Religious Freedom Restoration Act of 1993. The Court did not reach the First Amendment claim that had been raised in that case. *Id.* at 736. If confirmed, I would apply *Hobby Lobby* and all other Supreme Court precedents. As a judicial nominee, it would be inappropriate for me to comment on issues that are or could be the subject of impending or impending litigation.

- 8) Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The Supreme Court has clearly held that the Constitution contains guarantees of equal protection in a variety of contexts and protects the free exercise of religion. Because the intersection of these two fundamental guarantees is the subject of pending and impending

litigation, as a judicial nominee it would be inappropriate for me to opine or offer personal views on this issue. If confirmed, I am fully committed to applying Supreme Court equal protection and free exercise of religion precedent.

- 9) Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

The Supreme Court has held that state laws prohibiting interracial marriage violate equal protection in *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Please see my response to Question 8 above.

- 10) Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

Please see my response to Questions 8 and 9 above.

- 11) Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

No.

- 12) On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is difference than judicial selection in past years..."

- a) **Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law?" If so, by whom, what was asked, and what was your response?**

At no point during the judicial selection process has anyone asked me a question seeking any form of assurance concerning my views on an issue of administrative law.

- b) **Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

**c) What are your “views on administrative law”?**

Administrative law is a vast body of law covering a wide array of issues. If confirmed, I will follow all statutory law and relevant precedent, including the Administrative Procedure Act and *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1994).

13) Do you believe that human activity is contributing to or causing climate change?

As a judicial nominee, it would be inappropriate for me to offer a personal opinion on this issue as it may be related to impending or pending cases that may come before me if confirmed. If I am confirmed, I will faithfully apply Supreme Court precedent in this and in every area of the law without regard to my personal opinion.

14) When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has explained that legislative history may be used to assist in determining the meaning of an ambiguous statutory text. *See, e.g., Milner v. Dep’t of Navy*, 131 S.Ct 1259, 1267 (2011); *Comm. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992).

15) At any point during the process that led to your nomination, did you have any discussions with anyone — including but not limited to individuals at the White House, at the Justice Department, or at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

16) Please describe with particularity the process by which you answered these questions.

I reviewed the questions when I received them and prepared responses. I shared my draft responses with members of the Department of Justice, Office of Legal Policy and received their input. I finalized my answers, each of which is my own.

**Written Questions for Thomas Kirsch III**  
**Submitted by Senator Patrick Leahy**  
**November 25, 2020**

1. In October 2020, you stated that every citizen should have their “vote counted without it being stolen because of fraud.” Virtually all serious federal and state officials of both political parties have stated unequivocally that there was no widespread voter fraud in the 2020 election.

- (a) **Are you aware of any reliable evidence showing that there was widespread voter fraud in the 2020 election? If so, what is that evidence?**

I am aware of widely circulated media reports concerning this topic. Beyond that, as a sitting United States Attorney, it would be inappropriate for me to comment on what I am or am not aware of concerning voter fraud.

- (b) **President Trump’s own Department of Homeland Security has concluded that “there is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised” in the 2020 election. Do you agree with this assessment?**

Please see my response to Question 1(a) above.

- (c) **Do you agree that when public officials voice concerns about widespread or significant voter fraud without citing evidence of such fraud it serves to undermine many Americans’ faith in our elections?**

As a sitting United States Attorney and as a judicial nominee, it would not be appropriate for me to comment on or offer my personal opinion on remarks or actions of public officials, other than to acknowledge their obligation to follow the law.

2. You have promoted the use of civil asset forfeiture, a law enforcement tool that I believe is important but that too often fails to afford property owners with sufficient due process protections.

- (a) **Do you believe that it is consistent with basic notions of due process when the burden to prove innocent ownership is on the property owner? Does it matter in your view if the owner is never charged criminally, or never otherwise found to be connected to criminal activity?**

As issues concerning civil asset forfeiture are frequently litigated in federal courts, as a judicial nominee it would be inappropriate for me to

comment. Furthermore, it would be inappropriate for me to opine on a law or offer my policy viewpoints, which are irrelevant to the application of the law.

3. At your confirmation hearing, Senator Hirono asked if your office indicted any migrants under President Trump's "zero-tolerance" policy. You stated that you did not know but would look into it.

- (a) **Since you have had time to look into this matter, what involvement did your office have, if any, in implementing the President's "zero tolerance" policy? How many migrants, if any, did your office indict under the "zero tolerance" policy?**

My office charges hundreds of cases per year based on the facts and the law in every instance. I am not aware of any immigration cases filed under a zero-tolerance policy by my office during my time as United States Attorney. Attorney General Sessions' April 6, 2018, memorandum was addressed to United States Attorneys along the Southwest Border.

- (b) **Do you believe that systematically and deliberately separating innocent migrant children from their parents comports with American values?**

As a judicial nominee it would be inappropriate for me to comment on political matters.

4. Thirty percent of the population in the three states under the 7<sup>th</sup> Circuit's jurisdiction are people of color; 51 percent are women. Yet every sitting judge on the 7<sup>th</sup> Circuit is white, less than 36 percent is female, and none self-identifies as LGBTQ.

- (a) **Do you think it is important for our federal courts to be representative of the communities they serve?**

I think that diversity, which comes in many forms, is important on the federal bench. I have been committed to diversity throughout my career. Beyond that, as a judicial nominee, it would be inappropriate for me to opine on a political matter.

- (b) **Are 7<sup>th</sup> Circuit judges representative of the states they serve?**

Please see my response to Question 4(a) above.

5. Chief Justice Roberts wrote in *King v. Burwell* that

"oftentimes the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.' So when deciding whether the language

is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’ Our duty, after all, is ‘to construe statutes, not isolated provisions.’”

- (a) Do you agree with the Chief Justice? Will you adhere to that rule of statutory interpretation – that is, to examine the entire statute rather than immediately reaching for a dictionary?**

The Supreme Court has held that when interpreting statutory text, a judge should consider the words of a provision within the broader context of the statute as a whole. *See, e.g., Sturgeon v. Frost*, 139 S.Ct. 1066, 1084 (2019). If confirmed, I would follow and apply Supreme Court precedent concerning the methods of statutory interpretation.

6. President Trump has issued several attacks on the independent judiciary. Justice Gorsuch called them “disheartening” and “demoralizing.”

- (b) Does that kind of rhetoric from a President – that a judge who rules against him is a “so-called judge” – erode respect for the rule of law?**

The independence of the federal judiciary is a key aspect of our constitutional structure. Article III provides protections to allow for judicial independence. These protections are designed to enable judges to make decisions that are grounded in law, without respect to criticism in the public arena.

- (c) While anyone can criticize the merits of a court’s decision, do you believe that it is ever appropriate to criticize the legitimacy of a judge or court?**

Please see my response to Question 6(b) above.

7. President Trump praised one of his advisers after that adviser stated during a television interview that “the powers of the president to protect our country are very substantial *and will not be questioned*.” (Emphasis added.)

- (a) Is there any constitutional provision or Supreme Court precedent precluding judicial review of national security decisions?**

The Supreme Court has held that courts can review decisions by the President, including during times of war or other armed conflict. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

8. Many are concerned that the White House’s denouncement of “judicial supremacy” was an attempt to signal that the President can ignore judicial orders.

- (a) **If this president, any future president, or any other executive branch official refuses to comply with a court order, how should the courts respond?**

As a judicial nominee, it would not be appropriate for me to comment on a hypothetical scenario about a president's non-compliance with a court order. See Code of Conduct of U.S. Judges, Canon 3A(6). If confirmed, if such a scenario were to come before me, I would carefully examine the facts and circumstances of the case and the relevant legal authorities that may bear upon the question.

9. In *Hamdan v. Rumsfeld*, the Supreme Court recognized that the President "may not disregard limitations the Congress has, in the proper exercise of its own war powers, placed on his powers."

- (a) **Do you agree that the Constitution provides Congress with its own war powers and Congress may exercise these powers to restrict the President – even in a time of war? Justice O'Connor famously wrote in her majority opinion in *Hamdi v. Rumsfeld* that: "We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."**

The Constitution assigns powers over war and foreign affairs to the President and to Congress. In evaluating conflicts between the two branches, the Supreme Court has applied Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952). In *Hamdi v. Rumsfeld*, the Court held that, "We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." 542 U.S. 507, 536 (2004). If confirmed, I would apply applicable precedents, the Constitution, and any statutes that bear upon the President's exercise of authority, recognizing that under Supreme Court precedent, nobody is above the law.

- (b) **In a time of war, do you believe that the President has a "Commander-in-Chief" override to authorize violations of laws passed by Congress or to immunize violators from prosecution?**

Please see my response to Question 9(a) above.

- (c) **Is there any circumstance in which the President could ignore a statute passed by Congress and authorize torture or warrantless surveillance?**

Please see my response to Question 9(a) above.

**10. How should courts balance the President’s expertise in national security matters with the judicial branch’s constitutional duty to prevent abuse of power?**

The Supreme Court has held that it is “the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 177 (1803). In evaluating a challenge to Executive action, a court must consider relevant precedent, constitutional provisions, and any statutory provisions, as applicable, as set forth in my response to Question 9(a) above.

11. In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women.

**(a) Do you agree with that view? Does the Constitution permit discrimination against women?**

The Supreme Court has held that the Equal Protection Clause provides protections against discrimination against women. *See, e.g., Sessions v. Morales-Santana*, 137 S.Ct. 1678, 1689-90 (2017). If confirmed, I would follow this and all applicable precedent.

**12. Do you agree with Justice Scalia’s characterization of the Voting Rights Act as a “perpetuation of racial entitlement?”**

The Supreme Court has made clear that the “historic accomplishments of the Voting Rights Act are undeniable,” and that “dramatic improvements” in voter registration and turnout “are no doubt due in significant part to the Voting Rights Act itself, and stand as a monument to its success.” *Nw. Austin Mun. Util. No. One v. Holder*, 557 U.S. 193, 201-02 (2009). If confirmed, I will follow Supreme Court precedent interpreting the Voting Rights Act.

**13. What does the Constitution say about what a President must do if he or she wishes to receive a foreign emolument?**

Article I, section 9, clause 8 provides: “No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatsoever, from an King, Prince, or foreign State.”

14. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress’s findings in reaching its decision. As Justice Ginsburg’s dissent in *Shelby County* noted,



the record supporting the 2006 reauthorization was “extraordinary” and the Court erred “egregiously by overriding Congress’ decision.”

**(a) When is it appropriate for a court to substitute its own factual findings for those made by Congress or the lower courts?**

As a general rule, appellate courts consider the record that has been developed in the court below. Established standards of review govern an appellate court’s review of factual findings made in the district court. *See, e.g., Fed. R. App. P. 10(a)*. If confirmed, I would apply the binding precedent of *Shelby County v. Holder* and all precedent of the Supreme Court.

**15. How would you describe Congress’s authority to enact laws to counteract racial discrimination under the Thirteenth, Fourteenth, and Fifteenth Amendments, which some scholars have described as our Nation’s “Second Founding”?**

Each of these amendments provides that Congress has the power to enforce them “by appropriate legislation.” Under this enforcement power, the Supreme Court has “sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States.” *Fitzpatrick v. Bitzer*, 427 U.S. 445, 455 (1976). If confirmed, I would follow Supreme Court precedent.

16. Justice Kennedy spoke for the Supreme Court in *Lawrence v. Texas* when he wrote: “liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct,” and that “in our tradition, the State is not omnipresent in the home.”

**(a) Do you believe the Constitution protects that personal autonomy as a fundamental right?**

In *Lawrence v. Texas*, the Court held that “there is a realm of personal liberty which the government may not enter” that included, in that case, the right to engage in consensual “private sexual conduct.” 539 U.S. 558, 578 (2003) (citation omitted). If confirmed, I will follow *Lawrence v. Texas* and all other Supreme Court precedent.

17. In the confirmation hearing for Justice Gorsuch, there was extensive discussion of the extent to which judges and Justices are bound to follow previous court decisions by the doctrine of stare decisis.

**(a) In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court? Does the commitment vary depending on**

**whether the question is one of statutory or constitutional interpretation?**

The Supreme Court has held that “the doctrine of *stare decisis* is of fundamental importance to the rule of law.” *Hilton v. South Carolina Pub. Rys. Comm’n*, 502 U.S. 197, 202 (1991). It is never appropriate for lower courts to depart from Supreme Court precedent. *See, e.g., Bosse v. Oklahoma*, 137 S.Ct. 1, 2 (2016). The Seventh Circuit may overturn its own precedent by following the procedures in Circuit Rule 40(e) or by sitting en banc. *See* Cir. R. 40(e) (“A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted.”); *Mojica v. Gamett Co.*, 7 F.3d 552, 557 (7th Cir. 1993) (“When sitting *en banc*, the full court has the power to change general rules stated in previous cases.”). Revisiting a prior decision through an en banc hearing is “not favored and ordinarily will not be ordered unless (1) en banc consideration is necessary to secure and maintain uniformity in the court’s decisions; or (2) the proceeding involves a question of exceptional importance.” Fed. R. App. P. 35(a).

18. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it is important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety.

**(a) How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I’m interested in specific examples, not just a statement that you’ll follow applicable law.**

I would apply conflicts rules and ethical standards to assess whether a recusal is required or would be beneficial to the integrity of the judiciary. *See, e.g.,* 28 U.S.C. § 455; Code of Conduct of U.S. Judges, Canon 3C. As a specific example, I would recuse myself from any case or investigation in which I represented the government as the United States Attorney.

19. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding of the role of the courts and their responsibility to protect the constitutional rights of all individuals. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous

footnote 4 in *United States v. Carolene Products*. In that footnote, the Supreme Court held that “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.”

- (b) Can you discuss the importance of the courts’ responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?**

In footnote 4 of *Carolene Products*, the Supreme Court indicated that courts have a role in ensuring that democratic processes are open and work as intended and legislation does not undermine participation by citizens entitled to representation. In the footnote, the Supreme Court also introduced the idea of varied levels of scrutiny in assessing constitutionality depending on the constitutional issue presented. If confirmed, I will follow Supreme Court precedent on this and every other issue.

20. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into the administration’s conflicts of interest and the events detailed in the Mueller report, we are fulfilling our constitutional role.

- (a) Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?**

Yes.

- 21. Do you believe there are any discernible limits on a president’s pardon power? Can a president pardon himself?**

I have not studied the limits on a president’s pardon power. As a judicial nominee, it would be inappropriate for me to opine on an issue that may require consideration in future cases or to comment on a hypothetical scenario of a president’s ability to pardon himself.

- 22. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment?**

The Supreme Court has held that the Commerce Clause gives Congress the power to regulate activity that “substantially affects” interstate commerce, *United States v. Lopez*,

514 U.S. 549, 559 (1995), and that Congress has the power to enforce the Fourteenth Amendment where there is a “congruence between the means used and the ends to be achieved.” *City of Boerne v. Flores*, 521 U.S. 507, 519, 530 (1997). If confirmed, I would follow Supreme Court precedents concerning the scope of congressional powers.

23. In *Trump v. Hawaii*, the Supreme Court allowed President Trump’s Muslim ban to go forward on the grounds that Proclamation No. 9645 was facially neutral and asserted that the ban was in the national interest. The Court chose to accept the findings of the Proclamation without question, despite significant evidence that the President’s reason for the ban was animus towards Muslims. Chief Justice Roberts’ opinion stated that “the Executive’s evaluation of the underlying facts is entitled to appropriate weight” on issues of foreign affairs and national security.

**(a) What do you believe is the “appropriate weight” that executive factual findings are entitled to on immigration issues? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?**

In *Trump v. Hawaii*, the Supreme Court held that the President’s Proclamation was lawfully issued under 8 U.S.C. § 1182(f) and rejected plaintiff’s call for a searching inquiry into the justifications of the Presidential Proclamation at issue because such an inquiry would be “inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere.” 138 S.Ct. 2392, 2409 (2018). *Trump v. Hawaii* is binding precedent that, if confirmed, I would follow. As a judicial nominee, it would be inappropriate for me to grade a Supreme Court opinion or opine on legal issues that may require consideration and application in future cases.

24. **How would you describe the meaning and extent of the “undue burden” standard established by *Planned Parenthood v. Casey* for women seeking to have an abortion? I am interested in specific examples of what you believe would and would not be an undue burden on the ability to choose.**

In *Planned Parenthood v. Casey*, the Supreme Court held that an “undue burden” exists where “a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” 505 U.S. 2292, 2309 (2016). In *Whole Women’s Health v. Hellerstadt*, the Court further held that “unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on that right.” 136 S.Ct. 2292, 2309 (2016). I will apply *Casey*, *Whole Women’s Health*, and all Supreme Court precedent if confirmed. As a judicial nominee, it would be inappropriate for me to comment on particular examples that may arise in future cases or that may be the subject of pending or impending litigation.

25. Federal courts have used the doctrine of qualified immunity in increasingly broad ways. For example, qualified immunity has been used to protect a social worker who strip searched a four-year-old, a police officer who went to the wrong house, without even a search warrant for the correct house, and killed the homeowner, and many other startling cases.

**(a) Has the “qualified” aspect of this doctrine ceased to have any practical meaning? Do you believe there can be rights without remedies?**

The Supreme Court developed the modern doctrine of qualified immunity in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), and has refined it over time in cases such as *Pearson v. Callahan*, 555 U.S. 223 (2009). If confirmed, I will apply the Supreme Court’s precedents in the area of qualified immunity.

26. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by Chief Justice Roberts, held that the third-party doctrine should not be applied to cellphone geolocation technology. The Court noted “seismic shifts in digital technology,” such as the “exhaustive chronicle of location information casually collected by wireless carriers today.”

**(a) In light of *Carpenter* do you believe that there comes a point at which collection of data about a person becomes so pervasive that a warrant would be required? Even if collection of one bit of the same data would not?**

In *Carpenter v. United States*, the Supreme Court recognized that “[a]s technology has enhanced the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes, this Court has sought to assure preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” 138 S.Ct. 2206, 2214 (2018) (internal quotation omitted); *see also, e.g., Riley v. California*, 573 U.S. 373, 402 (2014) (“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”) (quotations and citations omitted). As a judicial nominee, it would be inappropriate for me to comment on particular

scenarios that may arise in cases that could come before me or that may be the subject of pending litigation.

27. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because Congress, with the power of the purse, rejected the President's request to provide funding for the wall.

**(b) With the understanding that you cannot comment on pending cases, are there situations in which you believe a president can lawfully allocate funds for a purpose previously rejected by Congress?**

In *Lincoln v. Vigil*, the Supreme Court explained that “a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how funds should or are expected to be spent do not establish and legal requirements[.]” 508 U.S. 182, 192 (1993) (quotation omitted). In any case involving a conflict between legislative and executive power, I would apply Supreme Court precedent regarding the specific powers at issue and the separation of powers. As a judicial nominee, it would be inappropriate for me to comment or opine on hypothetical situations that could arise in future cases that may come before me or may presently be presented in pending or impending litigation.

**Can you discuss the importance of judges being free from political influence or the appearance thereof?**

The Constitution creates an independent judiciary with protections to insulate judges from political influence. Canon 1 of the Code of Conduct for United States Judges provides that, “An independent and honorable judiciary is indispensable to justice in our society.” These protections and the obligation that judges act independently and impartially, without favor to any interest beyond fair and impartial application of the law, are essential to the rule of law. I strongly believe that an independent judiciary free from political influence is a central feature of our constitutional system and that an independent judiciary promotes the rule of law. If confirmed, I will perform my role with fidelity to the judicial oath and the fundamental values of independence and impartiality.

**Senator Dick Durbin  
Written Questions for Kirsch  
November 25, 2020**

For questions with subparts, please answer each subpart separately.

Questions for Thomas Kirsch

1. In 2016, President Obama nominated former Indiana Supreme Court Justice Myra Selby to fill the Indiana 7<sup>th</sup> Circuit seat that you have now been nominated to fill. Justice Selby was the first African-American justice to sit on the Indiana Supreme Court, and if confirmed she would have been the first African-American judge to sit in an Indiana seat on the 7<sup>th</sup> Circuit.

Justice Selby was an outstanding nominee; however, she did not get a hearing in Committee because then-Senator Dan Coats did not return a blue slip for her nomination and, during the Obama Administration, Judiciary Committee Republicans respected the blue slip for circuit court seats. President Trump did not re-nominate Justice Selby for this seat; instead he first nominated Justice Barrett and now you.

- a. **Currently the 7<sup>th</sup> Circuit has no minority judges. Do you think it's a problem if litigants who appear before the 7<sup>th</sup> Circuit do not see the diversity of the Circuit's population reflected in the judges who hear their cases?**

Diversity, which comes in many forms, is important. I have been committed to diversity my entire career. All litigants who come before the Seventh Circuit and every court should be treated the same. All should be treated with dignity, respect, fairness, and receive impartial justice. If confirmed, I am committed to those principles.

- b. **Outgoing President Trump has made 53 circuit court appointments and three Supreme Court appointments during his term. Not a single one of these appellate court appointees is African-American. What is your reaction to that fact? Is that a track record that outgoing President Trump should be proud of?**

Please see my response to Question 1(a) above.

2. **Was President Trump wrong when he tweeted on November 15: "I won the election"?**

I am aware that media outlets have called the election for former Vice President Biden. I am also aware that states have begun certifying their election results. According to media reports, Indiana's election results were certified on November 24, 2020. As a pending judicial nominee, it would be inappropriate for me to comment on the statements of political figures, including President Trump.

3. During the recent Supreme Court confirmation hearing, I was troubled by then-Judge Barrett's refusal to answer simple questions about basic constitutional, legal, and scientific

principles. I am going to ask you some questions that were asked of Justice Barrett, and I hope you will answer them.

**a. Is a President obligated by the Constitution to conduct a peaceful transition of power to his successor?**

The Constitution, along with other applicable law, provides for the peaceful transfer of power from one duly elected President to that President's duly elected successor.

**b. On July 23, 2019, President Trump said "I have an Article II, where I have the right to do whatever I want as president." Is that statement legally accurate?**

The Supreme Court has held that there are limits to a president's authority, including those limitations contained in the Constitution. If confirmed, I would follow Supreme Court precedent.

**c. Is it illegal to intimidate voters at the polls?**

There are numerous laws and Supreme Court precedent that prohibit forms of voter intimidation at the polls. If confirmed, I would follow Supreme Court precedent and apply the law.

**d. Does the Constitution give the President the authority to unilaterally delay a general election under any circumstances? Does federal law?**

I have not studied this issue. As a judicial nominee, it would be inappropriate for me to offer a personal opinion on this issue as it may be related to impending or pending cases that may come before me if confirmed. If I am confirmed, I will faithfully apply Supreme Court precedent in this and in every area of the law without regard to my personal opinion.

**e. Does the use of masks inhibit the spread of COVID-19?**

Although I have not studied this issue, I am aware of widely circulated media reports stating that masks inhibit the spread of viruses transmitted by respiratory droplets, including COVID-19.

**f. Is climate change happening and do you believe human activity is accelerating it?**

As a judicial nominee, it would be inappropriate for me to offer a personal opinion on this issue as it may be related to impending or pending cases that may come before me if confirmed. If I am confirmed, I will faithfully apply Supreme Court precedent in this and in every area of the law without regard to my personal opinion.



4. During your hearing I asked you what you have done during your tenure as U.S. Attorney in the Northern District of Indiana to prevent Indiana's gun shows from being the source of a pipeline of gun trafficking into the City of Chicago. You responded by noting you've prosecuted gun crime cases and straw purchase cases, including cases where guns were found in Chicago, but you did not mention any enforcement or trafficking prevention efforts involving gun show abuses. **Please provide information about what you have done during your tenure as U.S. Attorney in the Northern District of Indiana to prevent Indiana's gun shows from being the source of a pipeline of gun trafficking into the City of Chicago.**

Since being appointed United States Attorney in October 2017, I have charged over 640 defendants with guns crimes in violation of 18 U.S.C. §§ 922 and 924. I have charged over 60 defendants with violations of 18 U.S.C. § 922(a)(6), which prohibits the illegal straw purchase of firearms. I have engaged in public outreach, including participating in the February 25, 2020, Federal Firearms Licensee training referenced in question 12(d) of my Senate Judiciary Questionnaire, issued press statements, and held press conferences. As United States Attorney and as a judicial nominee, it would be inappropriate for me to comment further on a political matter. Furthermore, as United States Attorney, I am not permitted to comment on pending cases or ongoing investigations.

5. I also asked during your hearing if you would provide evidence of cases you've prosecuted against those who have abused the lack of background checks for private sales at Indiana gun shows. You said you would provide that information. **Please provide this information.**

Please see my response to Question 4 above. I reference the information provided in response to question 12 of my Senate Judiciary Questionnaire.

6. Attorney General Bill Barr recently issued a memo authorizing federal prosecutors to "pursue substantial allegations of voting and vote tabulation irregularities prior to the certification of elections".

The Attorney General's memo represents yet another instance of his weaponizing the Department of Justice to serve the political interests of President Trump. In attempting to fabricate a veneer of legitimacy for the baseless claims of voter fraud made by President Trump, Attorney General Barr overrode longstanding DOJ policies that were put in place to prevent political interference in our elections.

The previous guidelines said: "Public knowledge of a criminal investigation could impact the adjudication of election litigation and contests in state courts. Accordingly, it is the general policy of the department not to conduct overt investigations."

The Barr memo prompted DOJ's Director of the Election Crimes Branch to step down from his position. In an email to his colleagues, Richard Pilger noted that Barr's memo "abrogate[d] the forty-year-old Non-Interference Policy for ballot fraud allegations in the period prior to elections becoming certified and uncontested."

**a. What was your reaction to the Attorney General's memo?**

As a judicial nominee, it would be inappropriate for me to comment on my personal policy views, which are irrelevant.

**b. Are you aware of any substantial allegations of voting and vote tabulation irregularities in the 2020 election?**

As United States Attorney, it is inappropriate for me to comment on what steps my office may have or may not have taken in any criminal investigation or to confirm or deny the existence of any investigation. According to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.

7. While the Constitution does provide sweeping pardon power to the president, the Justice Department's Office of Legal Counsel issued an opinion in 1974 stating that: "Under the fundamental rule that no one may be a judge in his own case, the President cannot pardon himself."

**In your view, does the statement of the Office of Legal Counsel resolve the question of whether a president can pardon himself? If not, what authorities would you consider to resolve the question of whether the Constitution authorizes a president to pardon himself?**

I have not studied the limits on a president's pardon power. As a judicial nominee, it would be inappropriate for me to opine on an issue that may require consideration in future cases or to comment on a hypothetical scenario of a president's ability to pardon himself. If confronted with a pardon case, I would approach it like I would any other case and apply the law and Supreme Court and other applicable precedent to resolve the case.

8. **When do you believe it is appropriate for the Supreme Court to overrule one of its precedents?**

As a nominee to a lower court, it would be inappropriate for me to comment on when the Supreme Court should overturn its own precedent.

9. **Should circuit court judges ever write opinions—whether majority opinions, concurrences, or dissents—calling for the Supreme Court to review and consider reversing its own precedents? Or is it improper for lower court judges to opine on what the Supreme Court should do?**

It is never appropriate for a lower court to depart from Supreme Court precedent. See, e.g., *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other lines of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of

overruling its own decision.”). It may be appropriate for a circuit judge to identify areas in which Supreme Court cases appear to be inconsistent or in conflict. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (noting that a circuit judge had aptly described an earlier case’s inconsistencies with later jurisprudence).

10. **Do you believe that wealthy individuals or special interests that make undisclosed donations to organizations that help choose judicial nominees should make their donations public, so that judges can have full information when they make decisions about recusal in cases these donors may have an interest in?**

As a general matter, recusal is determined by application of the conflicts rules and ethical standards to assess whether a recusal is required or would be beneficial to the integrity of the judiciary. *See, e.g.,* 28 U.S.C. § 455; Code of Conduct of U.S. Judges, Canon 3C. If confirmed, I will follow these laws and rules, as well as Supreme Court and other applicable precedent in deciding whether to recuse myself from a certain case. As a judicial nominee, it would be inappropriate for me to comment further and opine on a political matter or share my personal policy views.

**Nomination of Thomas L. Kirsch II  
to the United States Court of Appeals for the Seventh Circuit  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

I was not previously aware of this material, but reviewed it as requested.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

As a judicial nominee, it would be inappropriate for me to opine on political matters relating to the nomination and confirmation of federal judges. *See* Code of Conduct of U.S. Judges, Canon 5.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Please see my response to Question 1(b) above.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination, informally or otherwise? If you do, please describe the circumstances.

No.

- e. Have you have any communications with Leonard Leo about your nomination to the Seventh Circuit, either before or after your nominations? Please specify.

No.

- f. Have you have any communications with Carrie Severino, President of the “Judicial Crisis Network,” about your nomination to either Seventh Circuit? Please specify.

No.

- g. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

Please see my response to Question 1(b) above.

- 2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts’ metaphor? Why or why not?

I agree that a judge’s job is to apply the law to the facts without regard to the result.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Practical considerations should be taken into account only when the law requires it. *See, e.g., Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (noting that courts look to whether the disposition required by a statute’s text is absurd). Otherwise, practical considerations are more appropriately left to the political branches.

- 3. In her recent book, *The Chief*, Supreme Court reporter Joan Biskupic documents the Court’s decision-making process in *NFIB v. Sebelius*, the landmark case concerning the constitutionality of the Affordable Care Act’s individual mandate and Medicaid expansion plan. Biskupic reported that the final votes, 5-4 to uphold the individual mandate as a valid exercise of the taxing clause, and 7-2 to curtail the Medicaid plan, “came after weeks of negotiations and trade-offs among the justices.”

- a. In your view, what is the role of negotiating with other judges when deliberating on a case?

Open discussion of a case with other judges is a natural part of the appellate process, as multi-judge panels seek to reach agreement on the decision and reasoning of the decision. The discussions should focus on governing law, including precedent, and not on outside considerations.

- b. As a judge, under what circumstances would you consider conditioning your vote in one case or on one issue in a case on your vote, or the vote of a colleague’s, in another?

No. It would be inappropriate. Each case must be decided on its own.

- c. Are there aspects or principles of your judicial philosophy that you consider non-negotiable? For example, if you consider yourself an originalist are there circumstances in which you might stray from the result dictated by that philosophy?

It is non-negotiable that a judge follow the law, including binding precedents, no matter the result without imposing the judge’s own personal or policy preferences on the law.

Judges must be impartial and fair and treat all litigants with dignity and respect, and ensure equal treatment under the law.

4. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance "to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old."

- a. What role, if any, should empathy play in a judge's decision-making process?

Empathy is an important human trait, including for a judge. However, empathy for one party or another cannot govern judicial decision-making. *See* 28 U.S.C. § 453 (judges must "administer justice without respect to persons"). Cases must be decided objectively and impartially based on the facts and the governing laws. Judges should treat all litigants with dignity and respect, and ensure that all are provided equal treatment under the law.

- b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

Please see my response to Question 4(a) above.

5. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

6. The Seventh Amendment ensures the right to a jury "in suits at common law."

- a. What role does the jury play in our constitutional system?

I have spent my career in the courtroom. Juries play a central and invaluable role in our legal system. Trial by jury is a foundational feature of our justice system.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

This issue is the subject of pending and impending litigation. Accordingly, as a judicial nominee, it would be inappropriate for me to comment.

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 6(b) above.

7. What do you believe is the proper role of an appellate court with respect to fact-finding?

As a general rule, appellate courts consider the record that has been developed in the court below. Established standards of review govern an appellate court's review of factual findings made in the district court. *See, e.g.*, Fed. R. App. P. 10(a). I will follow

all applicable rules, laws, and precedent with respect to the standards of review if confirmed.

8. Do you believe fact-finding, if done by appellate courts, has the potential to undermine the adversarial process?

Please see my response to Question 7 above.

9. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?
  - i. Determining whether the seminar or conference specifically targets judges or judicial employees.
  - ii. Determining whether the seminar is supported by private or otherwise anonymous sources.
  - iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.
  - iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.
  - v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

If confirmed, I commit to comply with the Code of Judicial Conduct, including the obligation to avoid impropriety or the appearance of impropriety. I will evaluate my participation in any activity to ensure compliance with my ethical and legal obligations. If I have any questions about whether an activity complies with the Code of Judicial Conduct, I will consult with the ethics attorneys at the Administrative Office of U.S. Courts.

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to Question 9(b) above.

Questions for Mr. Kirsch, nominee to be U.S. Circuit Judge for the Seventh Circuit

As United States Attorney, you have prosecuted a number of federal criminal proceedings. Reforming sentencing laws and providing greater discretion to trial judges who sentence low-level drug offenders has been a priority for many over the last number of years, as the consequences of overly harsh sentences for low-level offenses becomes apparent.

- What have you learned about our criminal justice system during your time at the U.S. Attorney's Office, and what principles will guide your review of lower court sentencing decisions?

Serving as a United States Attorney, and previously as an Assistant United States Attorney, has been a great honor and privilege. My decisions in criminal and civil investigations and cases have tremendous consequences on others. I make these decisions by applying and following applicable precedent, rules, and law, after carefully considering all the available facts and law. In my roles as a government prosecutor, I have always strived to treat everyone in the criminal justice system, including defendants and their counsel, with fairness, dignity, and respect. Additionally, I served as defense counsel in numerous federal criminal matters, including many jury trials and sentencings between 2008 and 2017. I have represented individual clients and have seen criminal cases from the perspective of the accused and the convicted. These experiences have heightened and reinforced my awareness of the enormous and consequential responsibility of the government's authority to enforce the law.

If confirmed, I would faithfully apply and follow Supreme Court precedent and the law in every case before me, including when reviewing a lower court's sentencing decision, regardless of the outcome and irrespective of my personal policy views, which are irrelevant to the application of the law.

- If confirmed, will you respect a trial judge's discretion to sentence below the applicable guidelines when it is warranted?

If confirmed, I would faithfully apply and follow Supreme Court precedent and the law in every case before me, including when reviewing a lower court's sentencing decision, regardless of the outcome of the case and irrespective of my personal policy views, which are irrelevant to the application of the law.

In November 2018, Chief Justice Roberts released a statement that said, "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them."

- Do you agree with Chief Justice Roberts's statement?

Yes.



- Do you agree that a judge's loyalty must be to the law and not to any particular President or political party?

Yes.

- If you were to hear a case in which a district court properly applied the law to the facts and enjoined a policy of this Administration, would you uphold the lower court's decision?

If confirmed, I would faithfully apply and follow Supreme Court precedent and the law in every case before me regardless of the outcome and irrespective of my personal policy views, which are irrelevant to the application of the law.

**Nomination of Thomas L. Kirsch II, to be United States Circuit Judge  
for the Seventh Circuit  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

I would apply the framework set forth in numerous Supreme Court decisions in the area of substantive due process.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes. I would also apply all binding precedent relevant to the issue.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes. I would apply Supreme Court precedents, consulting the historical sources the Supreme Court has identified, which include, among others, statutory laws and common law tradition. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702 (1997); *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

I would apply Supreme Court and Seventh Circuit precedent regarding the right at issue. I would also evaluate decisions from other circuits for their persuasive value. *See* 7th Cir. R. 40(e) ("A proposed opinion approved by a panel of this court adopting a position which would ... create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted.")

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent?

Yes.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Yes, I would apply the binding precedents of *Casey* and *Lawrence*.

- f. What other factors would you consider?

I would consider all of the factors recognized by the Supreme Court and Seventh Circuit precedent.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has held that the Equal Protection Clause provides protections against gender discrimination. See, e.g., *Sessions v. Morales-Santana*, 137 S.Ct. 1678, 1689-90 (2017); *United States v. Virginia*, 518 U.S. 515, 531-32 (1996). If confirmed, I would follow these and all applicable, binding precedent.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

If confirmed, I will apply all Supreme Court precedent. Arguments or academic questions that are not consistent with binding precedent will not affect my decisions.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I am unaware of the reasons why the *Virginia* litigation was not commenced until 1996. *Virginia* is binding Supreme Court precedent that all lower court judges are bound to follow.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

The Supreme Court has held that same-sex couples have a right to marry "on the same terms" as opposite sex couples. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2607 (2015). I will follow *Obergefell* and all other relevant, binding precedent. To the extent this question asks about legal issues that are pending or impending in litigation, as a judicial nominee, I cannot answer.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

As a judicial nominee, it would be inappropriate for me to comment on an issue that is or may be the subject of pending or impending litigation.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The Supreme Court has recognized this right in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). If confirmed, I will follow this precedent.

- a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court recognized in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), that the Constitution protects a woman's right to an abortion. If confirmed, I will follow this precedent.

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court recognized this right in *Lawrence v. Texas*, 539 U.S. 558 (2003). If confirmed, I will follow this precedent.

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses above.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

- a. When is it appropriate for judges to consider evidence that sheds light on our changing understanding of society?

In some cases, such as *United States v. Virginia*, *Obergefell v. Hodges*, and *Roper v. Simmons*, the Supreme Court has looked to current views or societal changes. If confirmed, I would follow those and all Supreme Court precedent.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Consideration of such evidence has a role when it is relevant to a disputed issue and is reliable. See Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). The Federal Judicial Center publishes an extensive reference guide to assist judges in addressing complex scientific and technical evidence. See *Reference Manual of Scientific Evidence* (2011).

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has held that same-sex couples have a right of privacy, *Lawrence v. Texas*, 539 U.S. 558 (2003), and a right to marry, *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), and has instructed that "[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth," *Masterpiece Cakeshop Inc. v. Colo. Civ. Rights Comm'n*, 138 S.Ct. 1719, 1727 (2018). If confirmed, I will follow these and other relevant, binding Supreme Court and Seventh Circuit precedent.

- b. When is it appropriate to apply Justice Kennedy's formulation of substantive due process?

Please see my response to Question 1 and its subparts above.

6. You previously were a member of the Federalist Society, a group whose members often advocate an "originalist" interpretation of the Constitution.
- a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

As I testified at my hearing, I believe that *Brown v. Board of Education* was correctly decided and holds a unique place in American jurisprudence. If confirmed, I would follow *Brown* and all Supreme Court precedent. I have not analyzed this academic issue in great detail, but I am generally aware that some originalist scholars assert that *Brown*'s holding comports with the original meaning of the Fourteenth Amendment. See, e.g., Michael McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995).

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Nov. 24, 2020).

While I have not studied this issue in great detail, I am generally aware that originalists have acknowledged and addressed similar concerns that determining a provision's original public meaning can be difficult. But, this is an academic question. If confirmed as a circuit judge, I will follow the interpretive approach and binding precedent that the Supreme Court has held applies to given constitutional provisions.

- c. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

The Supreme Court has applied the original public meaning of certain constitutional provisions. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). The Supreme Court's prevailing view of the Constitution is always dispositive. If confirmed, I will follow Supreme Court precedent.

- d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

Yes, in some circumstances. Please see my response to Question 6(c) above.

- e. What sources would you employ to discern the contours of a constitutional provision?

I would follow Supreme Court and Seventh Circuit precedent on what sources are properly considered in applying constitutional provisions.

7. Last month, you appointed an official in the U.S. Attorney's Office for the Northern District of Indiana to oversee and respond to election fraud complaints and other voting rights issues associated with the November 3 election. You stated that “[e]very citizen must be able to vote without interference or discrimination and to have that vote counted without it being stolen because of fraud,” and that DOJ “will always act appropriately to protect the integrity of the election process.”

- a. Do you have any reason to believe the election results in your jurisdiction—or in any other jurisdiction—were tainted by widespread fraud or are otherwise subject to doubt in any way?

As a sitting United States Attorney, it is inappropriate for me to comment on what steps my office or any other United States Attorney's office may have or may not have taken in any criminal investigation or to confirm or deny the existence of any investigation. According to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.

- b. Have you ever discussed pursuing allegations of voter fraud regarding the 2020 presidential election with anybody outside the U.S. Attorney's Office for the Northern District of Indiana?

No.

Nominations  
Hearing before the Senate Committee on the Judiciary  
Questions for the Record  
November 18, 2020

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Mr. Thomas L. Kirsch II

1. During your nomination hearing, you stated in response to a question from Senator Whitehouse about interpreting the Equal Protection Clause, “I would look at the language of the statute and consider the language of the statute, and what the words meant at the time they were written—not the intent of the legislatures that passed the law.”

- a. Please describe what the words of the Fourteenth Amendment’s Equal Protection Clause meant at the time they were written.

The Supreme Court has clearly held that the Constitution contains guarantees of equal protection in a variety of contexts. If confirmed, I am fully committed to applying Supreme Court equal protection precedent. Because the meaning and application of the Equal Protection Clause is the subject of pending and impending litigation, as a judicial nominee it would be inappropriate for me to opine or offer personal views on this issue.

During your nomination hearing, you also testified, “*Brown* is unique in our history, and I would agree that *Brown* is correctly decided—although . . . it’s not the role of a judicial nominee to grade Supreme Court opinions. But I can confidently say that *Brown* was correctly decided.”

- b. Please explain the legal and constitutional reasons for why you “can confidently say that *Brown* was correctly decided”.

As I testified at my hearing, I believe that *Brown v. Board of Education*, in striking down the doctrine of “separate but equal” in *Plessy v. Ferguson*, was correctly decided and holds a unique place in American jurisprudence. If confirmed, I would follow *Brown* and all Supreme Court precedent.

During your nomination hearing, Senator Kennedy asked you if you “think that the average American at the time the Constitution was adopted – after reading the Constitution – would say that the Constitution requires integrated public schools.” You answered: “I have to look into that issue . . . I don’t think the answer will be yes.”

- c. Please explain why you “don’t think the answer” to Senator Kennedy’s question “will be yes”.

I have not studied this issue. But, the Fourteenth Amendment had not been passed at the time the Constitution was adopted. Furthermore, the Tenth Amendment, which was



adopted as part of the Bill of Rights, left to the States the powers not delegated to the United States by the Constitution.

The schools of the District of Columbia—which were under the direct control of the federal government—remained segregated by law during the entire period of the proposal, ratification, and early enforcement of the Fourteenth Amendment.

- d. Do the expectations and judgments of citizens at the time of enactment of a law regarding the application of that law to specific cases control the meaning of that law?

The Supreme Court has applied the original public meaning of certain constitutional provisions. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). The Supreme Court’s prevailing view of the Constitution is always dispositive. If confirmed, I will follow Supreme Court precedent.

- e. Would the fact that those interpreting Title VII or the Equal Protection Clause did not envisage their extension to transgender or LGBTQ+ persons control the meaning of either provision?

See my response to Question 1(d) above. Furthermore, because the provisions of Title VII and because the meaning and application of the Equal Protection Clause are the subject of pending and impending litigation, as a judicial nominee it would be inappropriate for me to opine or offer personal views on this issue. If confirmed, I am fully committed to applying Supreme Court Title VII and equal protection precedent.

During your nomination hearing, Senator Whitehouse observed that it is “very hard to justify [*Brown*] under an analysis that required [the Equal Protection Clause] to be examined with a view to what was meant in 1868.” Your answer to Senator Kennedy suggests – noted above – why that is the case. To that end, Senator Whitehouse asked you how you reconcile your testimony that *Brown* was correctly decided with your view that the Equal Protection Clause should be read in light of what its words meant at the time they were written. You responded: “[I]f I were confirmed as a judge, I would apply the law. I would apply the text of the statute as I said and I would apply Supreme Court precedent.”

- f. Please answer Senator Whitehouse’s question: how do you reconcile your testimony that *Brown* was correctly decided with your view that the Equal Protection Clause should be read in light of what its words meant at the time they were written?

*Note:* Question 1(f) does not ask you if you would “apply the law,” “apply the text of the statute,” or “apply Supreme Court precedent.” Instead, it asks how you reconcile what are seemingly two inconsistent views that you articulated during your nomination hearing as a judicial nominee: that you can “confidently say” that *Brown v. Board of Education* was correctly decided but that – under your approach to constitutional interpretation in looking to the meaning of the words “at the time they were written” – you “don’t think” the meaning of the Equal Protection Clause of the Fourteenth Amendment at the time it was written required integrated public schools.

As I testified at my hearing, I believe that *Brown v. Board of Education* was correctly decided and holds a unique place in American jurisprudence. If confirmed, I would follow *Brown* and all Supreme Court precedent. I have not analyzed this academic issue in great detail, but I am aware that some originalist scholars assert that *Brown*'s holding comports with the original meaning of the Fourteenth Amendment. See, e.g., Michael McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995).

2. During your nomination hearing Senator Durbin asked if “you think we have an issue when it comes to race and law enforcement in America.” You responded: “Senator, I think racism exists in America and I think that’s abhorrent.”

- a. Please define “racism.”

Racism is prejudice, discrimination, or antagonism directed against someone on account of their race. See The Oxford English Dictionary.

- b. Please explain why you “think racism exists in America” and why you “think that’s abhorrent.”

I have spent half my career representing the United States as the United States Attorney and as an Assistant United States Attorney, and working to make our communities safer. I have prosecuted and am aware of horrible crimes, some that have been committed due to racist motivations of the defendants. I have spent time with and consoled crime victims and have spent time with those whom have been discriminated against on account of their race. If I am confirmed, I am committed to enforcing every provision of the Constitution, including the Equal Protection Clause, consistent with Supreme Court and other applicable precedent.

- c. Please identify where you “think racism exists in America.”

Racism exists in a variety of institutions and areas of Americans’ daily lives.

- d. Please state whether you believe racism can be (i) implicit, (ii) systemic, or (iii) institutional. If not, please explain why not.

Racism may take a variety of forms.

- e. Please state whether you believe there is an issue when it comes specifically to race and law enforcement in America.

In law enforcement, like in other institutions, there are situational instances of racism. All litigants who come before the Seventh Circuit and every court should be treated the same. All should be treated with dignity, respect, fairness, and receive impartial justice. If confirmed, I am committed to those principles.

On November 16, 2020, the NAACP sent a letter to Chairman Graham and Ranking Member Feinstein opposing your nomination to the Seventh Circuit. The NAACP noted, “[I]n 2020, the Seventh Circuit is once again an all-white court. The court has eleven seats, and all ten judges currently sitting on the court are white. The Seventh Circuit is the only all-white appellate court in the country.”<sup>1</sup>

As Senator Hirono and I noted at your nomination hearing, the composition of the Seventh Circuit bench fails to look like American and it fails to represent the diversity of America. Your nomination – through no fault of your own – in no way expands that diversity.

The Code of Conduct for United States Judges states that “[d]eference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges.”<sup>2</sup>

- f. How might the lack of diversity on the Seventh Circuit bench impact “public confidence in the integrity and independence of judges”?

Diversity, which comes in many forms, is important. I have been committed to diversity my entire career. All litigants who come before the Seventh Circuit and every court should be treated the same. All should be treated with dignity, respect, fairness, and receive impartial justice. If confirmed, I am committed to those principles.

- g. Should the federal judiciary represent the diversity of America? Please explain why or why not.

Please see my response to Question 2(f) above. Beyond that, as a judicial nominee, it would be inappropriate for me to opine on a political policy matter.

- h. How does your nomination enhance the Seventh Circuit’s reflection of the diversity of America?

Please see my response to Question 2(f) above. Beyond that, as a judicial nominee, it would be inappropriate for me to opine on a political policy matter.

3. During your nomination hearing, I asked you about Attorney General Barr’s November 9, 2020 memorandum to United States Attorneys, the FBI Director, and the Assistant Attorneys General at the Criminal Division, Civil Rights Division, and National Security Division at DOJ on “post-voting election irregularity inquiries.” In it, the Attorney General authorized all U.S. Attorneys, including yourself as the U.S. Attorney for the Northern District of Indiana, to “pursue substantial allegations of voting and vote tabulation irregularities of elections in

<sup>1</sup> Letter from the NAACP to Chairman Graham and Ranking Member Feinstein on the Nomination of Thomas Kirsch to the Seventh Circuit (Nov. 16, 2020), available at <https://naacp.org/wp-content/uploads/2020/11/NAACPKirschLetter.pdf>.

<sup>2</sup> See United States Courts, *Code of Conduct for United States Judges* (Mar. 12, 2019), available at <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.

your jurisdictions in certain cases,” including “clear and apparently-credible allegations of irregularities that, if true, could potentially impact the outcome of a federal election.”<sup>3</sup>

The Attorney General’s November 9 memo specifically referenced the Public Integrity Section’s Election Crimes Branch (ECB) and stated that “ECB’s general practice has been to counsel that overt investigative steps ordinarily should not be taken until the election in question has been concluded, its results certified, and all recounts and election contests concluded.”<sup>4</sup> In issuing this memo, the Attorney General upended a 40-year-old practice of non-interference.<sup>5</sup>

- a. Before this memo, how many cases involving “substantial allegations of voting and vote tabulation irregularities . . . that, if true, could potentially impact the outcome of the election” were being delayed as a result of the prior policy?

As a sitting United States Attorney, it is inappropriate for me to comment on what steps my office or any other United States Attorney’s office may have or may not have taken in any criminal investigation or to confirm or deny the existence of any investigation. According to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.

- b. Is your office now engaged in any investigations, pursuant to the Attorney General’s revised guidance, that it had not previously been able to pursue?

As a sitting United States Attorney, it is inappropriate for me to comment on what steps my office may have or may not have taken in any criminal investigation or to confirm or deny the existence of any investigation.

- i. Has your office been made aware of any “clear and apparently-credible allegations” of post-voting election irregularities that “could potentially impact the outcome of a federal election”?

Please see my response to Question 3(b) above.

- ii. Has your office concluded that voting or vote tabulation irregularities impacted the outcome of the November 2020 election?

Please see my response to Question 3(b) above. According to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.

<sup>3</sup> Memorandum from Attorney General Barr to United States Attorneys et al on Post-Voting Election Irregularity Inquiries (Nov. 9, 2020), available at <https://beta.documentcloud.org/documents/20403380-barrelectionmemo110920>.

<sup>4</sup> Memorandum from Attorney General Barr to United States Attorneys et al on Post-Voting Election Irregularity Inquiries (Nov. 9, 2020), available at <https://beta.documentcloud.org/documents/20403380-barrelectionmemo110920>.

<sup>5</sup> See Department of Justice, Public Integrity Section, Election Crimes Branch, *Federal Prosecution of Election Offenses* at pp. 8485 (8th Ed. 2017), available at <https://www.justice.gov/criminal/file/1029066/download>.

You were confirmed as the United States Attorney for the Northern District of Indiana in 2017.

- c. How many cases involving “post-voting election irregularities” in connection with the 2018 midterm election were you unable to pursue at the time as a result of the prior policy?

Please see my response to Question 3(b) above.

The same day the Attorney General issued this memo, the Director of the ECB, Richard Pilger, resigned from his position, specifically noting that the November 9 memo abrogated past ECB practice.<sup>6</sup> Days later, 16 other federal prosecutors – assistant U.S. attorneys from 15 different federal district courts across the country – assigned to monitor the election wrote to the Attorney General that they found no evidence of substantial allegations of voting and vote tabulation irregularities and asked him to withdraw his memo.<sup>7</sup>

- d. As the United States Attorney for the Northern District of Indiana, please state whether you are aware of any evidence of substantial allegations of voting and vote tabulation irregularities in connection with the November 2020 election.

Please see my response to Question 3(b)(ii) above.

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<sup>6</sup> See Katie Benner and Michael S. Schmidt, *Barr Hands Prosecutors the Authority to Investigate Voter Fraud Claims*, N.Y. TIMES (Nov. 9, 2020), available at <https://www.nytimes.com/2020/11/09/us/politics/barr-elections.html>; see also Email from Richard Pilger to Colleagues (Nov. 9, 2020), available at <https://twitter.com/vanitaguptacr/status/1326001089997631488>.

<sup>7</sup> See Matt Zapotosky and Tom Hamburger, *Federal Prosecutors Assigned to Monitor Election Malfeasance Tell Barr They See No Evidence of Substantial Irregularities*, WASH. POST (Nov. 13, 2020), available at [https://www.washingtonpost.com/national-security/william-barr-election-memo/2020/11/13/6ed06d20-25e4-11eb-a688-5298ad5d580a\\_story.html](https://www.washingtonpost.com/national-security/william-barr-election-memo/2020/11/13/6ed06d20-25e4-11eb-a688-5298ad5d580a_story.html); Katie Benner and Adam Goldman, *Federal Prosecutors Push Back on Barr Memo on Voter Fraud Claims*, N.Y. TIMES (Nov. 13, 2020), available at <https://www.nytimes.com/2020/11/13/us/politics/justice-department-voter-fraud.html>.

**Questions for the Record for Thomas Lee Kirsch II  
From Senator Mazie Hirono**

1. At the hearing, I asked you about an event in June 2018, where you introduced then-Attorney General Sessions when he gave a speech on immigration in Fort Wayne, Indiana. During the speech, Attorney General Sessions defended the Trump Administration's 'zero-tolerance' policy, which resulted in thousands of migrant children being forcibly separated from their parents.

- a. **I asked you to check whether your office prosecuted any migrants under the Justice Department's 'zero-tolerance' policy. Did your office prosecute any migrants under the 'zero-tolerance' policy?**

My office charges hundreds of cases per year based on the facts and the law in every instance. I am not aware of any immigration cases filed under a zero-tolerance policy by my office during my time as United States Attorney. Attorney General Sessions' April 6, 2018, memorandum was addressed to United States Attorneys along the Southwest Border.

- i. **If so, how many people did your office prosecute under this policy?**

Please see my response to Question 1(a) above.

- ii. **If so, how many children were separated from their parents because of those prosecutions?**

I am not aware of any children being separated from their parents as a result of a zero-tolerance illegal immigration case filed in the Northern District of Indiana.

- iii. **If so, did your office keep track of the parents and the children so they could be later reunited? If not, why did you not take any steps to help ensure that there was a way for parents to be reunited with their children?**

Please see my response to Question 1(a)(ii) above.

- b. **According to notes of your remarks, you pointed out the Attorney General was allocating more federal prosecutors to enforce immigration laws and other laws and expressed gratitude for his "strong support in prosecuting criminals." Were you grateful for DOJ allocation resources for the 'zero-tolerance' family separation policy?**

I have provided the entirety of my remarks in response to Question 12(d) of my Senate Judiciary Questionnaire. As a judicial nominee, it would be inappropriate for me to comment on Attorney General Sessions' statements or to share my personal policy views.

**c. When you introduced Attorney General Sessions or at any point in your tenure as U.S. Attorney, did you voice any opposition to the 'zero-tolerance' policy?**

Please see my response to Question 1(b) above.

2. In 2017, you reported that you have provided legal services to GEO Group – one of the largest for-profit prison companies that contracts with ICE to detain immigrants.

**a. How long have you had GEO Group as a client?**

I represented GEO Group in approximately 2016 and 2017, prior to my appointment as United States Attorney.

**b. GEO Group has a long history of inhumane treatment of its detainees, including those documented by the Justice Department's Civil Rights Division. More recently, there have been complaints of mistreatment of immigrants in GEO Group's detention centers, including excessive use of force, inadequate medical care, and abusive use of solitary confinement. Have you been involved in defending GEO Group in any of these allegations?**

No.

**c. You took on GEO Group as a client when you were a private attorney and had your choice of clients. What consideration did you give to their long record of inhumane and abusive treatment of its detainees when you agreed to represent them?**

It would be appropriate for me to comment on a characterization of a former client.

3. On November 9, 2020, after the major news networks called the presidential election for Joe Biden, Attorney General Barr issued a memo to U.S. Attorneys authorizing them to pursue allegations of voting irregularities in the 2020 Election, despite no evidence of widespread voter fraud. Richard Pilger, a longtime DOJ attorney who oversees election fraud crimes, stepped down from his position in protest over this memo.

Twenty-three state attorneys general—including those in Michigan, Wisconsin and Nevada, where President Trump has pursued or threatened legal challenges—sent Attorney General Barr a letter criticizing the policy change and noting that “so far, no plausible allegations of widespread misconduct have arisen that would either impact the outcome in any state or warrant a change in DOJ policy.”

Sixteen federal prosecutors assigned to monitor election misconduct in their districts reportedly sent Attorney General Barr a letter urging him to rescind his memo, saying the “policy change was not based in fact.”

**a. Do you agree with these sixteen federal prosecutors that the Barr memo should be rescinded?**

As a judicial nominee, it would be inappropriate for me to comment on my personal policy views, which are irrelevant.

**b. Do you agree with these sixteen federal prosecutors who stated they found no evidence of substantial irregularities in the 2020 Election?**

As a judicial nominee, it would be inappropriate for me to comment on my personal policy views, which are irrelevant. Furthermore, as a sitting United States Attorney, it would be inappropriate for me to comment on investigations conducted by prosecutors in other districts.

**c. Has your office taken any actions under the Barr memo? If so, what actions has your office taken?**

As United States Attorney, it is inappropriate for me to comment on what steps my office may have or may not have taken in any criminal investigation or to confirm or deny the existence of any investigation.

4. At the hearing, I asked you about your appointing an attorney to serve as the election officer to handle election fraud complaints in the Northern District of Indiana. In announcing this appointment, you stated that “every citizen must be able to vote without interference or discrimination and to have that vote counted without it being stolen because of fraud.”

**a. You stated that you could not talk about ongoing investigations, but I was not asking you about specific investigations. Do you have any evidence of widespread voter fraud or votes being stolen in the 2020 Election?**

Please see my response to Question 3(c) above. I note that according to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.

**b. President Trump has repeatedly made baseless claims of voter fraud and spread lies of the election results. Do you agree with President Trump that the 2020 Election was “rigged” and “stolen” from him?**

According to media reports, the State of Indiana certified its results from the 2020 election on November 24, 2020.



5. You have significant experience prosecuting public corruption crimes.

**a. How important do you think whistleblowers are to exposing public corruption?**

Witnesses with knowledge of public corruption, including insiders, are very important to exposing public corruption. As United States Attorney, I have repeatedly made public calls for witnesses with knowledge of public corruption to come forward and report it to me or to the FBI.

**b. Do you believe whistleblowers, including those that come forward to report misconduct by the President or his cabinet members such as Attorney General Barr, should be protected from retaliation?**

Please see my response to Question 5(a) above. Pursuant to law, whistleblowers are protected from illegal retaliation.

**c. Do you think it is a crime to offer a pardon to someone to keep them from testifying against the person offering the pardon?**

I have not studied this area of the law. However, as a judicial nominee, it would be inappropriate for me to comment on matters that might come before me as a judge.

6. In 2017, a local paper reported that you strongly defended the use of civil asset forfeiture to seize assets allegedly tied to criminal activity. You described it as a “really important” tool, despite the lengthy process to handle forfeitures. But recent reports have shown abuses by law enforcement in seizing assets without an adequate basis.

In January 2020, the Washington Post reported that the Drug Enforcement Administration seized the life savings of an airline passenger’s father without alleging any crime. A 2017 review by the Justice Department’s Inspector General found only 44 of 100 seizures by the DEA were related to an ongoing investigation or resulted in a new investigation, arrest, or prosecution.

**a. Do you still believe there are sufficient safeguards in place to protect against abuse of civil asset forfeiture?**

As issues concerning civil asset forfeiture are frequently litigated in federal courts, as a judicial nominee it would be inappropriate for me to comment. Furthermore, it would be inappropriate for me to opine on a law or offer my policy viewpoints, which are irrelevant to the application of the law.

**b. If so, how do you explain the findings by the Justice Department Inspector General?**

Please see my response to Question 6(a) above.

7. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

**a. Do you agree that training on implicit bias is important for judges to have?**

I believe that diversity training is important.

**b. Have you ever taken such training?**

I do not specifically recall any such training on implicit bias, but I have complied with all Department of Justice training requirements. Furthermore, I may have taken such training as a lawyer in private practice but do not have specific recollection of all the training I have ever taken.

**c. If confirmed, do you commit to taking training on implicit bias?**

If confirmed, I commit to taking all required training of United States Judges.

Nomination of Thomas L. Kirsch II  
United States Court of Appeals for the Seventh  
Circuit Questions for the Record  
Submitted November 25, 2020

**QUESTIONS FROM SENATOR**

**BOOKER**

1. The federal judiciary became significantly more diverse under President Obama—but much less diverse under President Trump. According to a recent study, 42 percent of President Obama’s judicial appointees were women, and 36 percent were people of color. By contrast, only 24 percent of President Trump’s appointees have been women, and only 16 percent have been people of color.<sup>1</sup>
  - a. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.  
  
Yes.
  - b. Are you troubled by the fact that the federal judiciary is becoming significantly less diverse, in terms of race, ethnicity, and gender, because of President Trump’s appointments to the bench?  
  
Diversity, which takes many forms, is important in the judiciary.
  - c. President Trump has nominated more than 50 individuals to the federal courts of appeals. Were you aware that just one of those nominees is Hispanic, and that not a single one is Black?<sup>2</sup>  
  
I am not specifically aware of all of President Trump’s judicial nominees.
  - d. Were you aware that, because of Senate Republicans’ obstruction against President Obama and then President Trump’s nomination choices, it has now been nearly seven years since a Black person was confirmed to a seat on any federal court of appeals?<sup>3</sup>  
  
I am not specifically aware of all of President Trump’s judicial nominees.
2. In June 2018, you gave introductory remarks for a speech by then-Attorney General Jeff Sessions in Fort Wayne, Indiana. You praised him for his “strong support in prosecuting

<sup>1</sup> *Diversity on the Federal Bench*, AM. CONST. SOC’Y (Oct. 2020), <https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench> (using data from the Federal Judicial Center).

<sup>2</sup> Madison Alder & Jasmine Ye Han, *Trump Nears Post-Nixon First: No Black Circuit Judges*, BLOOMBERG LAW (June 25, 2020), <https://news.bloomberglaw.com/us-law-week/no-black-judges-among-trumps-appeals-court-confirmations>; see *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUDICIAL CTR., <https://www.fjc.gov/history/judges/search/advanced-search>.

<sup>3</sup> See *African American Judges on the Federal Courts*, FED. JUDICIAL CTR., <https://www.fjc.gov/history/judges/search/african-american>.

criminals and all of his efforts to reduce crime in America.” During his speech, Attorney General Sessions also defended the Trump Administration’s “zero-tolerance” policy, which has led to hundreds of children being separated from their families. Attorney General Sessions said, “Our policies are discouraging people from making children endure that treacherous journey. . . . Everything the open borders lobby is doing is encouraging that and endangering these children.”<sup>4</sup>

a. Did you agree with that statement by Attorney General Sessions?

I have provided the entirety of my remarks in response to Question 12 of my Senate Judiciary Questionnaire. As a judicial nominee, it would be inappropriate for me to comment on Attorney General Sessions’ statements or to share my personal policy views.

b. The Trump Administration’s so-called zero-tolerance policy was squarely premised on increased prosecutions. As one Congressional Research Service report has explained, “Under the zero tolerance policy, [the Department of Justice] prosecuted 100% of adult aliens apprehended crossing the border illegally, making no exceptions for whether they were asylum seekers or accompanied by minor children. . . . DOJ’s ‘100% prosecution’ policy represented a change in the level of enforcement of an existing statute rather than a change in statute or regulation.”<sup>5</sup> Did you believe at the time that the zero-tolerance policy was part of what you called Attorney General Sessions’s “strong support in prosecuting criminals and all of his efforts to reduce crime in America”?

Please see my response to Question 2(b) above.

3. In October 2020, you said regarding election integrity that the Department of Justice “will always act appropriately to protect the integrity of the election process.”<sup>6</sup> On November 9, 2020, Attorney General William Barr issued a memorandum to U.S. Attorneys to pursue “substantial allegations” of voter fraud, even though there is no evidence of any widespread problem. This directive goes against longstanding guidance that the Department of Justice does not engage in these types of investigations before the election is certified.<sup>7</sup> Do you think that Attorney General Barr’s directive serves to “protect the integrity of the election process”—or undermine it?

As the United States Attorney for Northern Indiana, my office, working with our federal, state, and local law enforcement partners, strives to act appropriately,

<sup>4</sup> Megan Henry & Jordyn Hermani, *Attorney General Jeff Sessions: Zero-Tolerance Policy Isn’t About Being “Mean to Children,”* INDIANAPOLIS STAR (June 14, 2018), <https://www.indystar.com/story/news/2018/06/14/jeff-sessions-immigration-fort-wayne-attorney-general/698894002>.

<sup>5</sup> CONG. RSCH. SERV., R45266, THE TRUMP ADMINISTRATION’S “ZERO TOLERANCE” IMMIGRATION ENFORCEMENT POLICY 1 (2019) (footnotes omitted), <https://crsreports.congress.gov/product/pdf/R/R45266/9>. Louis Fisher, Cong. Rsch. Serv., RL31340, *Military Tribunals: The Quirin Precedent* 30 (2002).

<sup>6</sup> Mary Freda, *Assistant US Attorney Appointed to Oversee Election Day Voting Complaints, Concerns*, NW. IND. TIMES (Oct. 20, 2020), [https://www.nwitimes.com/news/local/govt-and-politics/elections/assistant-us-attorney-appointed-to-oversee-election-day-voting-complaints-concerns/article\\_ff77169a-d23d-53d9-aa4e-3c906f0d0c6b.html](https://www.nwitimes.com/news/local/govt-and-politics/elections/assistant-us-attorney-appointed-to-oversee-election-day-voting-complaints-concerns/article_ff77169a-d23d-53d9-aa4e-3c906f0d0c6b.html).

<sup>7</sup> Katie Benner & Michael S. Schmidt, *Barr Hands Prosecutors the Authority To Investigate Voter Fraud Claims*, N.Y. TIMES (Nov. 9, 2020), <https://www.nytimes.com/2020/11/09/us/politics/barr-elections.html>.

consistent with applicable federal law, to protect the integrity of the election process in Northern Indiana. As a judicial nominee, it would be inappropriate for me to comment on Attorney General Barr's statements or to share my personal policy views.

4. In April 2020, you said during a virtual press conference that the Department of Justice was taking "a proactive but lawful approach to expanding the use of home confinement [for the prison population] but only for those inmates who do not pose a danger to their communities. The Attorney General has made clear that public safety, including the safety of victims, is paramount."<sup>8</sup> Reported COVID-19 cases in state and federal prisons across the country have increased dramatically. As of November 10, there have been at least 182,776 reported positive cases.<sup>9</sup> Is the Department of Justice doing enough to protect individuals in correctional facilities?

Among other measures, I was referring to the Attorney General's March 26, 2020, Memorandum for the Director of the Bureau of Prisons on the prioritization of home confinement as appropriate in response to the COVID-19 pandemic. As the United States Attorney for Northern Indiana, I am not aware of all of the measures taken by the many components of the Department of Justice and the Bureau of Prisons to keep inmates and prison staff safe during the COVID-19 pandemic. I am therefore unable to offer my opinion on what additional measures could have been taken.

5. It has been reported that you provided legal services to the GEO Group,<sup>10</sup> a private prison operator that contracts with U.S. Immigration and Customs Enforcement to detain immigrants.<sup>11</sup> Please describe your representation of the GEO Group and the legal services you provided.

To the best of my recollection, I advised GEO Group on contractual matters.

6. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

Both originalism and textualism have various definitions. If confirmed, I would follow and apply Supreme Court precedent and apply the original public meaning in interpreting text. I believe this approach is consistent with the separation of powers established in the Constitution and the judiciary's role to say what the law is.

7. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

<sup>8</sup> Tom Kirsch, Participant, *Virtual Press Conference To Discuss Stimulus Checks, Scams, and Fraud Related to COVID-19 with IRS Special Agent in Charge Kathy Enstrom and FBI Assistant Special Agent in Charge Danny Youmara*, U.S. Attorney's Office (Apr. 28, 2020), in SJQ Attachments to Question 12(e), at 382.

<sup>9</sup> *A State-by-State Look at Coronavirus in Prisons*, MARSHALL PROJECT (Nov. 13, 2020),

<https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

<sup>10</sup> Lee Fang, *Donald Trump Law Enforcement Appointees Previously Worked for ICE Contractors*, INTERCEPT (July 5, 2018), <https://theintercept.com/2018/07/05/donald-trump-law-enforcement-appointees-previously-worked-for-ice-contractors>.

<sup>11</sup> Esther Fung, *Donald Trump Has Been Very Good for Publicly Listed Prison Owners*, WALL ST. J. (Feb. 26, 2019), <https://www.wsj.com/articles/donald-trump-has-been-very-good-for-publicly-listed-prison-owners-11551189601>.

Please see my response to Question 6 above.

8. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court has explained that legislative history may be used to assist in determining the meaning of an ambiguous statutory text. *See, e.g., Milner v. Dep't of Navy*, 131 S.Ct 1259, 1267 (2011); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992).

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my response to Question 8(a) above.

9. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes, I believe that judicial restraint is an important value for a judge in deciding a case and reflects the constitutional separation of powers. I believe that judicial restraint is the opposite of judicial activism.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>12</sup> Was that decision guided by the principle of judicial restraint?

*Heller* is binding Supreme Court precedent that I will follow and apply if confirmed. As a judicial nominee, it is inappropriate for me to opine on my views whether Supreme Court precedent was rightly decided.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>13</sup> Was that decision guided by the principle of judicial restraint?

*Citizens United* is binding Supreme Court precedent that I will follow and apply if

<sup>12</sup> 554 U.S. 570 (2008).

<sup>13</sup> 558 U.S. 310 (2010).

confirmed. As a judicial nominee, it is inappropriate for me to opine on my views whether Supreme Court precedent was rightly decided.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>14</sup> Was that decision guided by the principle of judicial restraint?

*Shelby County* is binding Supreme Court precedent that I will follow and apply if confirmed. As a judicial nominee, it is inappropriate for me to opine on my views whether Supreme Court precedent was rightly decided.

10. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>15</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>16</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

Cases concerning voter fraud and voter laws are impending and pending in federal courts. Accordingly, as a judicial nominee, it would be inappropriate for me to comment. Nor is it appropriate for me to comment on my personal policy views, which are irrelevant, or political issues. If confirmed, I will apply Supreme Court precedent and applicable law.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to Question 10(a) above.

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to Question 10(a) above.

11. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>17</sup> Notably, the

<sup>14</sup> 570 U.S. 529 (2013).

<sup>15</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>16</sup> *Id.*

<sup>17</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

same study found that whites are actually *more likely* than blacks to sell drugs.<sup>18</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>19</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>20</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

Regrettably, racism still exists in America. I have been committed to issues of diversity and inclusion my entire career, including as United States Attorney.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

While I am aware of the issue of implicit racial bias and have reviewed articles and reports that touch and reflect on this issue, I do not recall the titles of these articles and reports. To the best of my recollection, I have not read any books on this topic.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>21</sup> Why do you think that is the case?

As a judicial nominee, it would be inappropriate for me to comment on matters that are political or could be the subject of litigation.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>22</sup> Why do you think that is the case?

Please see my response to Question 11(d) above.

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

<sup>18</sup> *Id.*

<sup>19</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>20</sup> *Id.*

<sup>21</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 2 (Nov. 2017), [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>22</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).



In all cases, it is the fundamental duty of every judge to treat all litigants with dignity, fairness, respect, and equal justice. Judges must continually strive to strictly comply with that duty.

12. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>23</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>24</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I am not familiar with the Pew Charitable Trust fact sheet, but I am aware that others have concluded that many factors contribute to fluctuating crime rates.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to Question 12(a) above.

13. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

14. Do you believe that *Brown v. Board of Education*<sup>25</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes. As I testified at my hearing, although it is generally not appropriate for judicial nominees to grade or give a thumbs up or down to Supreme Court precedent, *Brown v. Board of Education* holds a unique place in American jurisprudence and history.

15. Do you believe that *Plessy v. Ferguson*<sup>26</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No.

16. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

<sup>23</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>24</sup> *Id.*

<sup>25</sup> 347 U.S. 483 (1954).

<sup>26</sup> 163 U.S. 537 (1896).

No.

17. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”<sup>27</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

Title 28 U.S.C. Section 455 does not list a judge’s race or ethnicity as a basis for recusal.

18. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>28</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court has held that due process protections apply to all “persons” in the United States, including aliens regardless of their entry status. *Zachrydas v. Davis*, 533 U.S. 678, 693 (2001). I will apply this Supreme Court precedent if confirmed. Beyond that, as a judicial nominee, it would be inappropriate for me to opine on a political matter.

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<sup>27</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>28</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
Zachary Noah Somers
2. **Position:** State the position for which you have been nominated.  
  
Judge, United States Court of Federal Claims
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.  
  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510
4. **Birthplace:** State year and place of birth.  
  
1979; Washington, D.C.
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
2001 – 2004, Georgetown University Law Center; J.D., 2004  
  
1998 – 2001, Georgetown University; A.B. (*cum laude*), 2001  
  
1997, Villanova University; no degree
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
2019 – present  
Committee on the Judiciary

United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Chief Investigative Counsel

2007 – 2019  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515  
General Counsel and Parliamentarian (2015 – 2019)  
Deputy Chief Counsel, Subcommittee on the Constitution (2012 – 2015)  
Majority Counsel, Subcommittee on the Constitution (2011 – 2012)  
Minority Counsel (2007 – 2011)

2005 – 2007  
Marzulla & Marzulla (now Marzulla Law)  
1150 Connecticut Avenue, Northwest, Number 1050  
Washington, D.C. 20036  
Associate

2004 – 2005  
The Honorable Victor J. Wolski  
United States Court of Federal Claims  
717 Madison Place, Northwest  
Washington, D.C. 20439  
Law Clerk

Summer 2003  
The Honorable Charles E. Grassley  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Law Clerk (uncompensated)

Summer 2002  
Robert Branand International  
4 E Street, Southeast  
Washington, D.C. 20003  
Intern (uncompensated)

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

I did not serve in the military. I registered for the selective service upon turning 18.

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

Editor-in-Chief, Georgetown Journal of Law and Public Policy (2003 – 2004)

Advocate, Barristers' Council (Moot Court) (2002 – 2004)

Leahy Moot Court Competition, Finalist

Sutherland Cup Moot Court Competition

Degree from Georgetown University conferred *cum laude* (2001)

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 (2017 – 2018)

Maryland State Bar Association (2004 – 2005)

10. **Bar and Court Admission:**

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

Maryland, 2004

There have been no lapses in membership.

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

United States Court of Federal Claims, 2005

I was admitted *pro hac vice* in the United States District Court for the Central District of California in 2006.

I also submitted two amicus briefs in the United States District Court for the District of Columbia in 2008 pursuant to the government attorney provision while I was a counsel on the House Judiciary Committee.

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.

Loyalty Society, Georgetown University Alumni Association (2012 – present)

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

To the best of my knowledge, the organization listed above neither currently discriminates, nor 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.

Zachary N. Somers, *Mythical Wall of Separation: How the Supreme Court has Amended the Constitution*, 2 Geo. J.L. & Pub. Pol'y 265 (2004). Copy supplied.

*Preface*, 2 Geo. J.L. & Pub. Pol'y 1 (2004). Copy supplied.

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

I am not aware of any materials responsive to this request.

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

I am not aware of any materials responsive to this request.

- 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.

As a House Judiciary Committee counsel, I from time to time addressed staff for the Republican Conference on legislation reported by the Judiciary Committee that was pending on the House floor or other matters of importance within the committee's jurisdiction. I do not believe any records or materials exist; however, any records or materials I may have used would be maintained at the Committee on the Judiciary, 2141 Rayburn House Office Building, Washington, D.C. 20515.

July 11, 2011 (approximate): Speaker, *H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Healthcare (HEALTH) Act*, Washington, D.C. I do not recall who sponsored this event; I spoke to a large group of doctors. Notes supplied.

May 16, 2006: Panelist, *Just Compensation: the Other Half of the Economic Development Debate*; 2006 Washington Appraisal Summit, Appraisal Institute, Washington, D.C. Press account supplied.

December 16, 2005: Panelist, *Abuses and Successes in Eminent Domain Cases*; Public-Private Partnership Forum, Virginia Crossings Resort, Glen Allen, Virginia. I have no notes, transcript, or recording. The organization that hosted the event no longer seems to be in operation.

- 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.

During my service on Capitol Hill, I often speak on background to journalists to explain legislation, oversight, or procedural matters. I do not maintain a list of

such interactions. I do not believe any records or materials exist; however, any records or materials I may have used would be maintained at the Committee on the Judiciary, 2141 Rayburn House Office Building, Washington, D.C. 20515.

Elizabeth Hancock, *New Journal Editors-in-Chief share top honors, high hopes*, Georgetown Law Weekly, Mar. 24, 2003. Copy supplied.

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

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

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



you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not held judicial office.

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

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

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

I have not held public office.

- 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.

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

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

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

I served as a law clerk to Judge Victor J. Wolski of the United States Court of Federal Claims from 2004 to 2005.

- 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.

2005 – 2007  
Marzulla & Marzulla (now Marzulla Law)  
1150 Connecticut Avenue, Northwest, Number 1050  
Washington, D.C. 20036  
Associate

2007 – 2019  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515  
Minority Counsel (2007 – 2011)  
Counsel, Subcommittee on the Constitution (2011 – 2012)  
Deputy Chief Counsel, Subcommittee on the Constitution (2012 – 2015)  
General Counsel and Parliamentarian (2015 – 2019)

2019 – present  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Chief Investigative Counsel

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

I have never served as a mediator or arbitrator.

b. Describe:

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

In 2004, I began my legal career as a law clerk for Judge Victor J. Wolski on the United States Court of Federal Claims. During my time as a clerk, I drafted opinions, memoranda, and orders, and provided advice on all types of proceedings before the court, including status conferences, oral argument on dispositive motions, hearings, and trials.

After clerking for a year, I took a job at a boutique law firm, Marzulla & Marzulla, in 2005, that specializes in Fifth Amendment takings and complex commercial litigation before the Court of Federal Claims and other federal courts. While at Marzulla, I primarily worked on researching and writing briefs for motions and responses to motions in cases pending in the Court of Federal Claims. I also worked on pre- and post-trial briefing and trial preparation for two trials in the Court of Federal Claims. In addition to the firm's Federal Claims' practice, I worked on motions, briefs, and other aspects of litigation in the United States Supreme Court, the Federal, Fourth, and Eighth Circuits, and federal district courts for the Central District of California, Iowa, and South Carolina. Additionally, I assisted with three matters in arbitration, including two international arbitrations regarding breach of contract and investment disputes under Chapter 11 of NAFTA.

From 2007 to 2019, I served as a counsel on the House Judiciary Committee first for then-Ranking Member Lamar Smith and then under Chairman Bob Goodlatte for his tenure as Chairman. As a counsel on the committee (first as a counsel to the full committee, then as a counsel to the Subcommittee on the Constitution, and finally as the full committee's General Counsel and Parliamentarian), I worked on all manner of federal law and policy within the committee's jurisdiction. This work included providing counsel to members on legislative and oversight hearings, markups, and consideration of legislation on the House floor; drafting hearing and markup memos, committee reports, and statements; and taking staff depositions and transcribed interviews.

From 2019 to the present, I have served as Chief Investigative Counsel for Chairman Lindsey Graham on the Senate Judiciary Committee. In this

role, I have handled some legislation but have mainly focused on oversight and investigations, including hearings, document requests, negotiating with agency and other counsel for witness and document production, and taking transcribed staff interviews of witnesses.

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

From 2005 through 2007, I primarily represented municipal water districts in breach of contract and Fifth Amendment takings litigation in the Court of Federal Claims and other property owners in Fifth Amendment takings litigation in the Court of Federal Claims and other federal courts.

From 2007 to the present as a counsel on the House and Senate Judiciary Committees, the elected officials I have served, the Congress, and the American people have been my clients. In this capacity, there is practically no area of the law within the jurisdiction of the Judiciary Committees that I have not had some involvement in, but much of my service particularly focused on the areas of constitutional law and legal reform.

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

1. federal courts:	100%
2. state courts of record:	__%
3. other courts:	__%
4. administrative agencies:	__%
  - ii. Indicate the percentage of your practice in:
 

1. civil proceedings:	100%
2. criminal proceedings:	__%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried a case. While I was in private practice, my firm had one case go to trial; I did not participate in the trial, but did work on pre-trial briefing, pre-trial motions, trial preparation, and post-trial briefing. I also prepared for a second trial, including preparing witnesses for trial; however, the court issued a ruling granting the government's motion for summary judgment on the eve of trial.

- i. What percentage of these trials were:
  - 1. jury: \_\_\_\_\_%
  - 2. non-jury: \_\_\_\_\_%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As an associate attorney at Marzulla & Marzulla, I took part in the writing of briefs in the cases listed below. In addition, I took part in the mediation of a case before retired Justice Sandra Day O'Connor in litigation that was pending before the United States Court of Federal Claims.

*Norman v. United States* (05-1050) (petition for a writ of certiorari). Copy supplied.

*Wilkie v. Robbins* (06-219) (2007) (brief amici curiae of Brooks Realty and Burgett Geothermal Greenhouses, Inc.). Copy supplied.

*EPA v. Defenders of Wildlife* (06-549) (2007) (brief amici curiae of Kern County Water District, et al.). Copy supplied.

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

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Stockton E. Water Dist. v. United States*, 70 Fed. Cl. 515 (2006); 72 Fed. Cl. 141 (2006); 75 Fed. Cl. 321 (2007); 76 Fed. Cl. 470 (2007), 76 Fed. Cl. 497 (2007)

From 2005 through 2007, I was part of a team of lawyers who represented two California water districts and a city and county in California in an action against the United States in the Court of Federal Claims, asserting claims for breach of contract and a Fifth Amendment taking based on the Bureau of Reclamation's failure to provide these water users with the quantities of water from a federal water resources project required by

contract. During my time working on this case, I participated in preparing briefing and argument on cross-motions for summary judgment, trial preparation, pre-trial briefing and motions, and a motion to alter or amend the judgment and for reconsideration of the final judgment in the case. After I left private practice, the case continued on for nine years and was appealed to the Federal Circuit three times and remanded back to the Court of Federal Claims for further proceedings each time. Ultimately, the plaintiffs prevailed on some of their claims and lost on others.

Judge: Hon. Christine O.D. Miller

Co-counsel

Nancie G. Marzulla  
 Roger J. Marzulla  
 Marzulla Law  
 1150 Connecticut Avenue, Northwest, Number 1050  
 Washington, D.C. 20036  
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Jeanne M. Zolezzi  
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 Stockton, California 95207  
 (209) 472-7700

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 Spaletta Law P.C.  
 Post Office Box 2660  
 Lodi, California 95241  
 Phone: (209) 224-5568

Opposing counsel

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 United States Department of Justice  
 Environment and Natural Resources Division  
 Natural Resources Section  
 501 I Street, Suite 9-700  
 Sacramento, California 95814  
 (916) 930-2207

Kristine S. Tardiff  
 United States Department of Justice  
 Environment and Natural Resources Division  
 Natural Resources Section  
 53 Pleasant Street, 4th Floor  
 Concord, New Hampshire 03301  
 (603) 230-2583

2. *Casitas Mun. Water Dist. v. United States*, 72 Fed. Cl. 746 (2006); 76 Fed. Cl. 100 (2007)

From 2006 through 2007, I took part in representing a water district in litigation against the United States in the Court of Federal Claims in which the water district claimed that the diversion of irrigation water from a water reclamation project and the additional costs imposed on the water district for the installation of a fish ladder to protect steelhead trout, under the Endangered Species Act, effected an uncompensated taking of the water district's property and breached district's repayment contract with Bureau of Reclamation. During the time I worked on the case, I assisted in drafting briefing in response to the government's motion for summary judgment, with pre-trial briefing, with trial and witness preparation, and with a motion to certify for interlocutory appeal, among other things. After I left private practice, in 2013 the Court of Federal Claims' dismissal of the case was affirmed by the Federal Circuit.

Judge: Hon. John P. Wiese

Co-counsel

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Opposing counsel

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James D. Gette  
United States Department of Justice  
Environment and Natural Resources Division  
150 M Street, Northeast, Room 3210  
Washington, D.C. 20002  
(202) 305-1461

3. *Klamath Irrigation Dist. v. United States*, 75 Fed. Cl. 677 (Fed. Cl. 2007)

From 2006 through 2007, I took part in representing fourteen water, drainage, and irrigation districts and 13 agricultural landowners that brought suit against the United States in the Court of Federal Claims alleging that their water rights had been taken without just compensation and that the United States was in breach of its contracts with

the districts and landowners by failing and refusing to deliver quantities of irrigation water. While I worked on the case, I assisted in writing briefing in response to the federal government's motion for summary judgment on the water users' contract claims, responding to a large number of amicus briefs filed in the case, and in helping prepare the lead partner for oral argument on the government's motion. After I left private practice, judgment was entered in favor of the federal government after several rulings in the Court of Federal Claims and appeals to the Federal Circuit.

Judge: Hon. Francis M. Allegra (deceased)

Co-counsel

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 Roger J. Marzulla  
 Marzulla Law  
 1150 Connecticut Avenue, Northwest, Number 1050  
 Washington, D.C. 20036  
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Opposing counsel

Kristine S. Tardiff  
 United States Department of Justice  
 Environment and Natural Resources Division  
 53 Pleasant Street, 4th Floor  
 Concord, New Hampshire 03301  
 (603) 230-2583

4. *Land Grantors v. United States*, 71 Fed. Cl. 614 (2006); 74 Fed. Cl. 518 (2006); 75 Fed. Cl. 122 (2007); 75 Fed. Cl. 583 (2007)

From 2006 through 2007, I was part of a team of lawyers who represented a group of former property owners and their heirs in litigation involving two interrelated cases that we litigated essentially simultaneously in the Court of Federal Claims. One case was a congressional reference case brought pursuant to 28 U.S.C. § 1492 and the other was a class action brought pursuant to the court's general jurisdictional statute, the Tucker Act. The theory of both cases was that the federal government owed the plaintiffs restitution because plaintiffs were paid less than the reasonable value of land they owned that was taken by the federal government during World War II due to the failure of the United States to compensate the owners for coal, gas, oil, and other mineral rights. I worked on motions, oppositions to motions, and memoranda of law in support thereof, on various issues in the cases. In addition, I took part in a mediation before retired Justice Sandra Day O'Connor in an attempt to settle the cases. After I left private practice, the Court of Federal Claims review panel overturned Judge Braden's decision in favor of the plaintiffs on the congressional reference case, and a ruling by the Supreme Court in an unrelated case extinguished the Tucker Act case on statute of limitations grounds.

Judge: Hon. Susan G. Braden (retired)



Co-counsel

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 Marzulla Law  
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 Washington, D.C. 20036  
 (202) 822-6760

M. Stephen Pitt  
 Merrill S. Schell  
 Jean W. Bird  
 Wyatt, Tarrant & Combs, LLP  
 500 West Jefferson Street, Suite 2800  
 Louisville, Kentucky 40202  
 (502) 589-5235

Opposing Counsel

William J. Shapiro  
 United States Department of Justice  
 Environment and Natural Resources Division  
 Natural Resources Section  
 501 I Street, Suite 9-700  
 Sacramento, California 95814  
 (916) 930-2207

5. *Greenbrier v. United States*, 75 Fed. Cl. 637 (2007)

From 2006 to 2007, I took part in representing 249 owners of low- and moderate-income housing who brought suit against the United States in the Court of Federal Claims for breach of contract and a temporary taking due to enactment of statutes that restricted their rights to prepay their HUD-insured mortgage loans. We filed a motion under Rule 60(b)(6) seeking relief from final judgment in these consolidated cases on the grounds that subsequent decisions, based upon identical facts and claims, in cases challenging the application of the same federal statute regarding prepayment of certain HUD-insured mortgage loans, demonstrated that these plaintiffs were being treated differently than other similarly situated property owners. I assisted in researching and writing the Rule 60(b)(6) motion and with some of the initial work on appeal of the Court of Federal Claims' decision to the Federal Circuit before I left private practice. The Court of Federal Claims ruled against the 60(b)(6) motion and, after I left private practice, the Federal Circuit affirmed.

Judge: Hon. James F. Merow (deceased)

Co-Counsel

Nancie G. Marzulla

Roger J. Marzulla  
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1150 Connecticut Avenue, Northwest, Number 1050  
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Opposing Counsel

Brian M. Simkin (formerly with the Justice Department)  
Foreign Claims Settlement Commission  
441 G Street, Northwest, Room 6234  
Washington, D.C. 20579  
(202) 616-6975

*Pres. of Los Olivos v. United States DOI*, 06-cv-1502 (C.D. Cal.)

In 2006, I was co-lead on a team of lawyers who represented the Santa Ynez Band of Chumash Mission Indians in litigation in the United States District Court for the Central District of California brought by two local citizens groups challenging a decision of the Interior Board of Indian Appeals (IBIA) that held that the citizens groups lacked standing to challenge the decision of the Bureau of Indian Affairs (BIA) to approve an application to have land taken into federal trust. In the district court, the citizens groups sought a declaratory judgment that the IBIA erred in dismissing their administrative appeal. They also sought injunctive relief to preclude implementation of the BIA's order approving the application. I was part of a team that successfully moved to allow the Santa Ynez Band of Chumash Mission Indians to intervene in the litigation and to have the district court remand the case back to the IBIA. After I left private practice, the case came back to the district court and was once again remanded back to the IBIA.

Judge: Hon. A. Howard Matz (retired)

Co-Counsel

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Judith Rabinowitz

United States Department of Justice  
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Cambria, California 93428

Scott A. Edelman  
Gibson Dunn & Crutcher  
2029 Century Park East, Suite 4000  
Los Angeles, California 90067  
(310) 557-8061

7. *Mildenberger v. United States*, No. 06-760 (Fed. Cl.)

From 2006 through 2007, I took part in initiating this suit in the Court of Federal Claims against the United States for an uncompensated physical taking of property on behalf of a group of Florida land owners. The lawsuit alleged that the United States' discharge of polluted fresh water from Lake Okeechobee into the St. Lucie River between 2003 and 2005 destroyed the estuary's natural environment and effected an unconstitutional taking of the plaintiffs' riparian rights. I assisted in writing the litigation plan, the complaint initiating the litigation, and initial discovery requests and interrogatories. After I left private practice, the case was dismissed on statute of limitations grounds.

Judge: Hon. Lynn J. Bush

Co-counsel  
Roger J. Marzulla  
Nancie G. Marzulla  
Marzulla Law  
1150 Connecticut Avenue, Northwest, Number 1050  
Washington, D.C. 20036  
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Opposing counsel  
Steven D. Bryant  
United States Department of Justice  
Environmental and Natural Resources Division  
601 D Street, Northwest, Room 3205  
Washington, D.C. 20004  
(202) 305-0424

8. *Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 2006 WL 1285105 (D.S.C. 2006), *aff'd*, 493 F.3d 404 (4th Cir. 2007)

From 2006 through 2007, I worked with a team of attorneys on this action brought in federal district court claiming that a South Carolina law effected a taking of the plaintiffs' property for which they were entitled to just compensation under the Fifth and Fourteenth Amendments. Plaintiffs claimed that, as a result of the South Carolina law, plaintiffs' video poker machines (which had been modified to South Carolina specifications such that they could not be used elsewhere) lost all market value. I assisted on the briefing in opposition to South Carolina's motion to dismiss and on the cross-motions for summary judgment. Moreover, after summary judgment was entered in favor of South Carolina, I assisted with briefing in the Fourth Circuit. After I left private practice, the Fourth Circuit affirmed the district court's decision.

District Court Judge: Hon. C. Weston Houck (deceased)

Appeals Court Judges: Hon. Hiram E. Widener, Jr. (deceased), Hon. J. Harvie Wilkinson III, Hon. Robert B. King

Co-Counsel

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172 Meeting Street

Charleston, South Carolina 29401

(843) 577-4435

9. *Hawkeye Commodity Promotions, Inc. v. Miller*, 432 F.Supp.2d 822 (N.D. Iowa 2006), *aff'd*, 486 F.3d 430 (8th Cir. 2007)

From 2006 through 2007, I was part of a team of lawyers representing a video gaming operator in a suit in the Northern District of Iowa and in the Eighth Circuit in which the gaming operator sought declaratory and injunctive relief against the Iowa Attorney General and the Commissioner of the Iowa Department of Public Safety alleging that the state's amended gaming statutes, which would make it illegal for retailers to offer the gaming operator's machines to the public, were unconstitutional as applied to the gaming operator under the Contracts, Just Compensation, Equal Protection and Due Process clauses of the Constitution. I assisted with briefing and argument preparation in both the district court and the Eighth Circuit. The district court rejected the plaintiff's claims and the Eighth Circuit affirmed that decision.

Judge: Hon. Linda R. Reade

Appeals Court Judges: Hon. Kermit E. Bye, Hon. Steven M. Colloton, Hon. Duane Benton

Co-Counsel

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Patrick M. Roby (deceased)

Paula L. Roby

Elderkin & Pirnie, P.L.C.

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(319) 362-2137

Opposing Counsel

Robert K. Porter

Dickinson, Mackaman, Tyler & Hagen PC

699 Walnut Street, Suite 1600

Des Moines, Iowa 50309

(515) 244-2600

10. *Otay Mesa Prop., L.P. v. United States*, No. 06-167 (Fed. Cl.); *Int'l Indus. Park, Inc. v. United States*, No. 06-876 (Fed. Cl.); *D & D Landholdings, Ltd. P'ship v. United States*, No. 06-877 (Fed. Cl.)

From 2006 through 2007, I took part in initiating related lawsuits in the Court of Federal Claims brought by the owners of property adjacent to the Mexican border alleging that activities of Border Patrol agents on their properties in pursuit of illegal immigration expanded beyond the limits of a 20-foot-wide easement previously granted and thus

constituted a physical taking requiring just compensation under the Fifth Amendment. I assisted in writing the litigation plan, the complaint initiating the litigation, and initial discovery requests and interrogatories. After I left private practice, the Court of Federal Claims entered judgment in favor of the plaintiffs and the Federal Circuit affirmed that judgment in part.

Judge: Hon. Thomas C. Wheeler

Co-counsel

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Nancie G. Marzulla  
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Washington, D.C. 20036  
(202) 822-6760

Opposing Counsel

Susan V. Cook  
United States Department of Justice  
Environment and Natural Resources Division  
Post Office Box 663  
Washington, D.C. 20044  
(202) 305-0470

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.)

International arbitrations

As part of our property rights practice while I was at Marzulla & Marzulla, I assisted with two international arbitrations regarding breach of contract and investment disputes under Chapter 11 of NAFTA. One involved a claim by 17 Texas irrigation districts serving the Rio Grande Valley that claimed that the government of Mexico captured and seized irrigation water owned by the districts and diverted it for the use of farmers on the Mexican side of the Rio Grande. The second involved a claim that Mexico failed to build the required customs facilities needed for a Texas company to fully open a toll bridge it built over the Rio Grande connecting commercial traffic between the United States and Mexico. In these matters, I conducted research, assisted in the drafting of briefing, and helped prepare for argument before arbitrators.

Legislation, oversight, and policy matters

From 2007 to 2019, I served as a counsel on the House Judiciary Committee, first for then-Ranking Member Lamar Smith and then under Chairman Bob Goodlatte for his tenure as chairman. As a counsel on the committee (first as a counsel to the full committee, then as a counsel to the Subcommittee on the Constitution, and finally as the full committee's General Counsel and Parliamentarian), I worked on all manner of federal law and policy within the committee's jurisdiction. At different times while on the committee, I directly handled legislation and oversight related to bankruptcy, antitrust law, constitutional law, administrative law, legal reform and court rules, laws authorizing lawsuits against the federal government, victims compensation programs, and in addition, as General Counsel, supervised legislation and oversight related to federal criminal, immigration, and intellectual property law, among others.

While a counsel on the House Judiciary Committee, I drafted countless hearing and markup memos for members, dozens of committee reports, and was responsible for editing more than 85 committee reports drafted by other committee counsels. I also was the lead counsel on eight bi-partisan bills that were signed into law and led committee efforts on many smaller provisions in larger legislative packages that became law. Finally, as the committee's General Counsel, I advised on and interpreted the committee's rules, practices, and procedures, and the Rules of the House of Representatives regarding the conduct of all Judiciary Committee business.

With particular regard to the role of serving as a judge on the Court of Federal Claims, I worked on various legislative proposals to alter the jurisdiction of the Court of Federal Claims and to authorize several congressional reference cases to be heard in the court. In addition, with regard to general litigation and court rules, I worked on legislation to amend the Federal Rules of Civil Procedure, including those related to Rule 11, class actions, and discovery, to authorize litigation by the House of Representatives and enforce congressional subpoenas, and to amend the law with regard to various areas of litigation in the federal courts, including the False Claims Act, the Anti-Terrorism Act, the Equal Access to Justice Act, and the Foreign Sovereign Immunities Act. Moreover, I had responsibility for oversight and legislation regarding several statutes that waive sovereign immunity and allow litigation against the United States, including the Federal Tort Claims Act and the Tucker Act. I was also involved in the litigation of two cases regarding the enforcement of House Judiciary Committee subpoenas in the United States District Court for the District of Columbia, including writing two amicus briefs.

In addition, in my roles on the House Judiciary Committee and as Chief Investigative Counsel for Chairman Lindsey Graham on the Senate Judiciary Committee, I have been involved in all manner of congressional oversight. From preparing members of the committees for hearings, to making document requests and issuing subpoenas, to negotiating with agency and other counsel for witness and document production, to taking staff depositions and transcribed interviews, my congressional oversight experience is extensive.

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.

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

Other than my participation in the Federal Government's Thrift Savings Program and the Federal Employees Retirement System, I do not have any arrangements for deferred income or future benefits from previous business relationships.

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

I currently have no such plans, commitments, or agreements.

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

When my nomination is formally submitted to the Senate, I will file my mandated Financial Disclosure Report and supply a copy to this Committee.

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

Statement of Net Worth is attached.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will evaluate any real or potential conflict, or relationship that could give rise to appearance of conflict, on case-by-case basis and determine



appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

I have spent most of my legal career in public service, as a law clerk on the Court of Federal Claims and a counsel on the House and Senate Judiciary Committees. During this time, I have been restricted from engaging in the practice of law on behalf of any entity other than the federal government. While in private practice, the firm I worked for maintained a non-profit, public interest legal firm: Defenders of Property Rights. I did legal research and analysis and provided other legal support to Defenders of Property Rights and recall working on some post-trial motions in at least one case, *Vaizburd v. Unites States*, 00-136 (Fed. Cl.).

26. **Selection Process:**

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

In January 2018, I expressed my interest in a judgeship on the Court of Federal Claims to the White House Counsel's Office. In February 2018, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C. In July 2020, I was contacted by the White House Counsel's office and informed that I was being considered for a nomination. Since that time, I have been in contact with both the Department of Justice and the White House Counsel's Office regarding my nomination.

- 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.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		127	597	Notes payable to banks-secured (auto)		22	873
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		54	507	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		21	371
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	2	028	362
Real estate owned – see schedule	3	385	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	400				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		228	011				
				Total Liabilities	2	072	606
				Net Worth	1	747	909
Total Assets	3	820	515	Total Liabilities and Net Worth	3	820	515
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Vanguard Emerging Markets Govt Bond Index ETF	\$ 1,213
Vanguard Energy ETF	968
Vanguard High Dividend Yield ETF	826
Vanguard Information Technology ETF	627
Vanguard Mun Bd Tax Exempt Bd Index ETF	1,367
Vanguard S&P 500 Index ETF	7,798
Vanguard Small Cap Growth ETF	2,150
Vanguard Total Bd Market ETF	888
Vanguard Total Stock Market ETF	4,306
SPDR Portfolio S&P 500 High Dividend ETF	287
VanEck Vectors High Yield Mun Index ETF	300
Pub Srv Enterprise Group stock	3,806
Cohen & Steers Select Infrastructure Fund	5,596
Blackrock Strategic Global Bd Fund A	3,139
PIMCO Income Fund CL A	13,783
Dow Inc. stock	1,351
ConocoPhillips stock	2,480
DuPont de Nemours Inc. stock	1,709
Phillips 66 stock	1,913
Total Listed Securities	<u>\$54,507</u>

Real Estate Owned

Rental Property #1	\$960,000
Rental Property #2 (50% interest)	450,000
Rental Property #3 (50% interest)	475,000
Rental Property #4 (50% interest)	750,000
Rental Property #5 (50% interest)	750,000
Total Real Estate Owned	<u>\$3,385,000</u>

Real Estate Mortgages Payable

Rental Property #1 – Mortgage	\$357,609
Rental Property #2 – Mortgage (50% interest)	212,578
Rental Property #3 – Mortgage (50% interest)	293,274
Rental Property #4 – Mortgage #1	462,306
Rental Property #4 – Mortgage #2	110,000
Rental Property #5 – Mortgage	592,595
Total Real Estate Mortgages Payable	<u>\$2,028,362</u>

AFFIDAVIT

I, ZACHARY N SOMERS, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

08/24/2020  
(DATE)

[Signature]  
(NAME)

Subscribed and sworn before me 8.24.2020.

[Signature]  
(NOTARY)



**Nomination of Zachary Somers to the United States Court of Federal Claims  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1) According to your Questionnaire, you have been admitted to the Court of Federal Claims since 2005. However, you also note that you were only in private practice for two years from 2005 to 2007 before spending the last thirteen years working as a counsel for the House and the Senate.

**a) Have you argued or appeared before the U.S. Court of Federal Claims—the court to which you have been nominated?**

I have not argued before the Court of Federal Claims; however, I have appeared in several cases before the court and began my legal career clerking on that court.

**b) If not, why do you think the President nominated you for this position?**

Please see my answer to Question 1(a).

- 2) The Judiciary Committee’s Questionnaire asks nominees a number of questions about their litigation experience. On your Questionnaire, you wrote that “I have not tried a case.”

**a) According to the most recent data available, the Court of Federal Claims currently has almost 1,500 pending cases. Given that you have never litigated a case, what makes you qualified to serve on the bench and consider any of these 1,500 matters?**

My legal experience is extensive, both in the Court of Federal Claims and as a committee counsel in the House and the Senate. My legal career began as a law clerk on the Court of Federal Claims, during which time I participated in all manner of proceedings before the court. After clerking, I spent nearly two years as an associate at a law firm that largely specialized in Court of Federal Claims litigation. While at that firm, I was involved in nearly all stages of litigation in cases before the Court of Federal Claims and other federal courts. This work included drafting complaints, initial discovery requests, reviewing discovery, depositions, responding to motions to dismiss, drafting motions for summary judgment and supporting briefs, drafting pre- and post-trial motions and briefs, trial preparation, and drafting briefs appealing Court of Federal Claims rulings to the Federal Circuit and the Supreme Court in complex breach of contract and Fifth Amendment takings cases.

In addition to practice before the court, while I was a counsel on the House Judiciary Committee, I worked on resolutions to authorize congressional reference cases before the Court of Federal Claims and legislation to amend 28 U.S.C. § 1500 and the court’s contract dispute, bid protest, and military pay case jurisdiction. Beyond Court of Federal Claims issues directly, my legislative portfolio at House Judiciary predominantly

consisted of matters related to federal court litigation. While I have extensive experience in complex congressional investigations, including dozens of staff depositions, my legislative work has concentrated on legislation impacting litigation in federal court, such as legislation to: create or amend federal causes of action, amend federal court procedure and evidentiary rules, create or limit waivers of sovereign immunity against the United States, the states, and foreign governments, expand federal statutes of limitation and preempt state statutes of limitation, and enhance enforcement of congressional subpoenas. In working on legislation in these areas, I have regularly read judicial opinions, court rules, and secondary sources, and interpreted how existing statutes and proposed statutory changes apply.

I believe the experience I have gained on Capitol Hill will be invaluable if I am lucky enough to be confirmed, especially to this court in which trials are rare and without juries or a criminal docket. I also believe I would bring an increasingly unique perspective to the bench having served in the legislative branch as studies indicate that prior legislative experience has been decreasing on the federal bench in recent years.

- 3) In May 2014, President Obama nominated five individuals to open seats on the Court of Federal Claims—Judge Nancy Firestone, Thomas Halkowski, Patricia McCarthy, Jeri Somers, and Armando Bonilla. All of them received hearings in June and July 2014, and were voice-voted out of Committee between June and August of 2014. Nevertheless, their nominations were blocked by Senator Tom Cotton, who argued that the Court of Federal Claims’ workload did not justify confirming any nominees to those vacancies. Senator Cotton stated, “The reason we should not confirm new judges to the Court of Federal Claims has little to do with these nominees and more to do with the court itself. It doesn’t need new judges. We should keep in mind that the number of active judges authorized for the Court of Federal Claims by statute, 16, isn’t a minimum number, it is a maximum. It is our duty as Senators to determine if the court needs that full contingent and to balance judicial needs in light of our obligation to be good stewards of taxpayer dollars.... [It] makes no sense to spend more taxpayer dollars on judges that the court simply does not need.” (Floor statement, July 14, 2015).

**a) What is your understanding of the court’s current caseload and its need for judges?**

The decision to appoint judges up to the court’s statutory maximum is given to the President with the advice and consent of the Senate. As a judicial nominee, it would be inappropriate for me to offer an opinion on the need for additional judges on the court.

**b) Do you agree with Senator Cotton that “it makes no sense to spend more taxpayer dollars on judges that the court simply does not need”?**

Please see my answer to Question 3(a).

- 4) Please respond with your views on the proper application of precedent by judges.

**a) When, if ever, is it appropriate for the Court of Federal Claims to depart from**

**Supreme Court or relevant circuit court precedent?**

It is never appropriate for a judge on the Court of Federal Claims to depart from precedent.

**b) When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

As a judicial nominee, it would be inappropriate for me to give my view on when it is appropriate for the Supreme Court to overturn its own precedent. The Supreme Court has, however, articulated the factors it considers in deciding whether to overturn its own precedent to include “the quality of [the precedent’s] reasoning, the workability of the rule it establishes, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision.” *Janus v. American Federation of State, County, and Municipal Employees*, 138 S.Ct. 2448, 2478-2479 (2018).

- 5) When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

**a) Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?**

If confirmed, as a federal trial judge, I will follow all Supreme Court precedent, including *Roe v. Wade* and its progeny.

**b) Is it settled law?**

Please see my answer to Question 5(a).

- 6) In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

If confirmed, as a federal trial judge, I will consider all precedent, including *Obergefell v. Hodges*, to be settled law.

- 7) In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and



create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

**a) Do you agree with Justice Stevens? Why or why not?**

As a judicial nominee, it would be inappropriate for me to comment on whether a case was correctly decided. If confirmed, I will fully and faithfully apply all precedent of the Supreme Court and the Federal Circuit, including *District of Columbia v. Heller*.

**b) Did *Heller* leave room for common-sense gun regulation?**

As the Supreme Court observed in *Heller*, "[l]ike most rights, the right secured by the Second Amendment is not unlimited. . . . [N]othing 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. . . . [A]s we have explained, that the sorts of weapons protected were those 'in common use at the time.'" *District of Columbia v. Heller*, 554 U.S. 570, 626-627 (2008).

**c) Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

The opinions in *Heller* disagreed on whether the majority opinion was a departure from precedent. See *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008) ("We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment.").

- 8) In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a) Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

In *Citizens United v. FEC*, 558 U.S. 310, 342 (2010), the Supreme Court held that "First Amendment protection extends to corporations." If confirmed, I will fully and faithfully apply this precedent.

**b) Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my answer to Question 8(a).

**c) Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that the Religious Freedom Restoration Act applies to closely-held corporations. It did not reach the further question of whether corporations have a right to freedom of religion under the First Amendment. As a judicial nominee, it would be inappropriate for me to comment further on an issue that could be the subject of pending or impending litigation.

- 9) On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years..."

**a) Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

Not that I recall.

**b) Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

Not that I recall.

**c) What are your "views on administrative law"?**

As a judicial nominee, it is inappropriate for me to give my personal views on any area of the law. If confirmed, I will fully and faithfully apply all Supreme Court and Federal Circuit precedent, including administrative law precedent.

- 10) Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

No.

- 11) Do you believe that human activity is contributing to or causing climate change?

As a judicial nominee, it is inappropriate for me to comment on a political issue, especially one like climate change that may be the subject of pending or impending litigation.

- 12) Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

As a judicial nominee, it is inappropriate for me to comment on this question as it is the subject of pending and impending litigation in the federal courts.

- 13) Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

In *Loving v. Virginia*, the Supreme Court held that state laws prohibiting interracial marriage violate the Equal Protection Clause. As a judicial nominee, it would be inappropriate for me to comment any further on this issue, which could be the subject of pending and impending litigation in the federal courts.

- 14) Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

Please see my answer to Question 13.

- 15) When is it appropriate for judges to consider legislative history in construing a statute?

Statutory construction begins with the text of the statute itself. If the statute is clear on its face, there is no need to look any further. In cases in which ambiguity exists, a judge may consider a number of methods of statutory construction. In some cases, precedent may require a judge to examine legislative history in construing an ambiguous statute.

- 16) At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

- 17) Please describe with particularity the process by which you answered these questions.

I received these questions from the Office of Legal Policy and then began reviewing the questions and drafting responses. After I prepared draft responses, I sent them to the Office of Legal Policy, which offered some recommended edits. I reviewed the comments that I received, prepared a final draft of my answers, and authorized the Office of Legal Policy to submit my responses to the Committee.

**Senator Dick Durbin**  
**Written Questions for Somers**  
**November 25, 2020**

For questions with subparts, please answer each subpart separately.

Questions for Zachary Somers

1. **You say in your questionnaire that you have not tried a case. Don't you think that actual trial experience is helpful for a person to serve as a judge?**

My legal experience is extensive, both in the Court of Federal Claims and as a committee counsel in the House and the Senate. My legal career began as a law clerk on the Court of Federal Claims, during which time I participated in all manner of proceedings before the court. After clerking, I spent nearly two years as an associate at a law firm that largely specialized in Court of Federal Claims litigation. While at that firm, I was involved in nearly all stages of litigation in cases before the Court of Federal Claims and other federal courts. This work included drafting complaints, initial discovery requests, reviewing discovery, depositions, responding to motions to dismiss, drafting motions for summary judgment and supporting briefs, drafting pre- and post-trial motions and briefs, trial preparation, and drafting briefs appealing Court of Federal Claims rulings to the Federal Circuit and the Supreme Court in complex breach of contract and Fifth Amendment takings cases.

In addition to practice before the court, while I was a counsel on the House Judiciary Committee, I worked on resolutions to authorize congressional reference cases before the Court of Federal Claims and legislation to amend 28 U.S.C. § 1500 and the court's contract dispute, bid protest, and military pay case jurisdiction. Beyond Court of Federal Claims issues directly, my legislative portfolio at House Judiciary predominantly consisted of matters related to federal court litigation. While I have extensive experience in complex congressional investigations, including dozens of staff depositions, my legislative work has concentrated on legislation impacting litigation in federal court, such as legislation to: create or amend federal causes of action, amend federal court procedure and evidentiary rules, create or limit waivers of sovereign immunity against the United States, the states, and foreign governments, expand federal statutes of limitation and preempt state statutes of limitation, and enhance enforcement of congressional subpoenas. In working on legislation in these areas, I have regularly read judicial opinions, court rules, and secondary sources, and interpreted how existing statutes and proposed statutory changes apply.

I believe the experience I have gained on Capitol Hill will be invaluable if I am lucky enough to be confirmed, especially to this court in which trials are rare and without juries or a criminal docket. I also believe I would bring an increasingly unique perspective to the bench having served in the legislative branch as studies indicate that prior legislative experience has been decreasing on the federal bench in recent years.

2. **When was the last time you filed a brief in court?**

Most recently, I have consulted on amicus briefs filed by members of Congress who I worked for and consulted on, including reviewing filings and negotiating a settlement of, litigation involving the enforcement of a House Judiciary Committee subpoena in 2018. In addition, I have filed many briefs in court, most recently in 2008.

3. **When was the last time you appeared in court?**

The last time I appeared in court was in 2007.

**Nomination of Zachary N. Somers, to be Judge for the United States Court of Federal  
Claims  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

If confirmed, to the extent this issue were to arise in the Court of Federal Claims, I would fully and faithfully apply Supreme Court precedent that addresses this question, including *Washington v. Glucksberg*, 521 U.S. 702 (1997).

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes, according to Supreme Court precedent, the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). In *Glucksberg*, the Supreme Court further instructed that, in terms of sources, "[o]ur Nation's history, legal traditions, and practices . . . provide the crucial 'guideposts for responsible decisionmaking.'" *Id.* at 721.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of any court of appeals?

Yes, if a right has been previously recognized by the Supreme Court or the Federal Circuit, I would be bound to follow that precedent. In the absence of binding precedent, I would consider decisions of circuits other than the Federal Circuit.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has been recognized by any court of appeals?

Yes.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See*

*Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

I would fully and faithfully apply *Casey* and *Lawrence*.

- f. What other factors would you consider?

I would consider the factors articulated in *Glucksberg* and any additional factors the Supreme Court or Federal Circuit have set forth in other cases.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

In *United States v. Virginia*, 518 U.S. 515 (1996), the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment applies to gender equality. If confirmed, I would fully and faithfully apply this precedent.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my answer to Question 2.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I do not know why this question was not decided until 1996.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

In *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment protects the right of same sex couples to marry "on the same terms and conditions as opposite-sex couples." 576 U.S. 644, 675-676 (2015). If confirmed, I would fully and faithfully apply this and all other binding precedents.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

I do not believe that the Supreme Court has decided this issue; accordingly, it would be inappropriate for me to comment on an issue that may be pending or impending in litigation. If confirmed, I will fully and faithfully apply all Supreme Court and Federal

Circuit precedent concerning how transgender people are treated under the Constitution and federal law.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that there is a constitutional right to privacy that protects a woman's right to use contraceptives. If confirmed, I will fully and faithfully apply this precedent and all precedents of the Supreme Court and the Federal Circuit.

- a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court has held that there is a constitutional right to privacy that protects a woman's right to obtain an abortion. *See, e.g., Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973). If confirmed, I will fully and faithfully apply these precedents and all precedents of the Supreme Court and the Federal Circuit.

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court held that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders. *See also Obergefell v. Hodges*, 576 U.S. 644 (2015). If confirmed, I will fully and faithfully apply these precedents and all precedents of the Supreme Court and the Federal Circuit.

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 3, 3(a), and 3(b).

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.



- a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

Federal trial judges may appropriately consider such evidence when directed to by Supreme Court or circuit precedent. If confirmed, I will fully and faithfully apply *United States v. Virginia*, *Obergefell v. Hodges*, and all other Supreme Court and Federal Circuit precedent on this issue.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

The admission of scientific and other expert testimony is governed by Federal Rule of Evidence 702 and the factors set forth in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), and its progeny. If confirmed, I will fully and faithfully follow all Supreme Court and Federal Circuit precedent on the role of sociology, scientific evidence, and data in judicial analysis.

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has observed that "[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018). If confirmed, I will fully and faithfully apply *Obergefell* and other precedent on this issue and all other precedents of the Supreme Court and Federal Circuit.

- b. When is it appropriate to apply Justice Kennedy's formulation of substantive due process?

Please see my response to Question 5(a).

6. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

- a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

While I believe that *Brown* was correctly decided, I have not studied the original public meaning of the Fourteenth Amendment sufficiently enough to know whether *Brown* is consistent with it. I am aware, however, that some scholars have argued that *Brown* is consistent with the original meaning of the Fourteenth Amendment. See Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995).

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Nov. 25, 2020).

If confirmed, I will fully and faithfully apply Supreme Court and Federal Circuit precedent, including precedent on the meaning of terms such as “freedom of speech,” “equal protection,” and “due process of law.”

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

Yes, in cases involving the interpretation of constitutional provisions, the Supreme Court has examined the text, structure, and history of the provision, including the provision’s public meaning at the time of its adoption, in its interpretation. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will fully and faithfully follow all precedents from the Supreme Court and the Federal Circuit, including those on constitutional interpretation.

- d. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my answer to Question 6(c).

- e. What sources would you employ to discern the contours of a constitutional provision?

Please see my answer to Question 6(c).

7. Please describe any experience you have practicing in the Court of Federal Claims.

From 2004 to 2005, I served as a law clerk on the Court of Federal Claims. After clerking, from 2005 to 2007, I was an associate attorney at a law firm that largely specialized in Court of Federal Claims litigation, although I also worked on several cases in other federal courts. While at that firm, I worked on approximately 10 cases filed in the Court of Federal Claims. This work included drafting complaints, initial discovery requests, reviewing discovery,

responding to motions to dismiss, drafting motions for summary judgment and supporting briefs, drafting pre-trial motions and pre-trial briefs, drafting post-trial motions, trial preparation, and drafting briefs appealing Court of Federal Claims rulings to the Federal Circuit and the Supreme Court in complex breach of contract and Fifth Amendment takings cases seeking hundreds of millions of dollars in damages and just compensation. In addition to practice before the court, while I was a counsel on the House Judiciary Committee, I worked on resolutions to authorize congressional reference cases before the Court of Federal Claims, and legislation to amend 28 U.S.C. § 1500 and the court's contract dispute, bid protest, and military pay case jurisdiction.

**Questions for the Record for Zachary Noah Somers  
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I ask each nominee to answer the following two questions:
  - a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**  
  
No.
  - b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**  
  
No.
2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.
  - a. **Do you agree that training on implicit bias is important for judges to have?**  
  
Because judges are required to preside over and decide cases impartially and without regard to any biases, prejudices, or preferences, any training that helps judges understand and fulfill their duty to be impartial is important.
  - b. **Have you ever taken such training?**  
  
No.
  - c. **If confirmed, do you commit to taking training on implicit bias?**  
  
If confirmed, I will participate in training opportunities that will assist me in performing my job to the best of my ability, including with regard to implicit bias.
3. As a law student at Georgetown University, you were the Editor-in-Chief of the Georgetown Journal of Law and Public Policy. In the notes section, you wrote a piece entitled “The Mythical Wall of Separation: How the Supreme Court has Amended the Constitution.” You wrote about the Establishment Clause and how it was not intended to erect “a wall of separation between Church and State.”
  - a. **Does this statement still reflect your views on the Establishment Clause? Can you discuss what actions are prohibited by the Establishment Clause?**

In my note, I observed that the “Establishment Clause, as it was originally understood by its framers and ratifiers, had a very limited dual purpose: to prohibit Congress from establishing a national church and to clarify that each state had a free hand in defining the meaning of establishment in its own laws and constitution.” 2 Geo. J. L. & Pub. Pol’y 265, 266 (2004). The references made to “a wall of separation” in my note were intended to convey that the phrase comes from a metaphor used in a letter written by Thomas Jefferson more than ten years after the First Amendment was ratified, that the phrase is not in the First Amendment itself, and that the phrase and letter are of little utility in determining the original meaning of the Establishment Clause. As a judicial nominee, it would be inappropriate for me to comment on what actions are prohibited by the Establishment Clause, as cases involving the clause are pending and impending in the federal courts.

**b. Can you discuss your views on whether the Establishment Clause should be applied to the States?**

The Supreme Court has clearly applied the Establishment Clause to the states. To the extent such a question could arise in the Court of Federal Claims, I would fully and faithfully apply Supreme Court and Federal Circuit precedent.

4. Since 2007, you have been a congressional employee focused on policy and oversight investigations. You have very little litigation experience and have never tried a case.

**a. Given your lack of experience in a courtroom, how can you ensure that you will be able to serve as a judge and correctly follow the relevant rules and procedure in a courtroom?**

My legal experience is extensive, both in the Court of Federal Claims and as a committee counsel in the House and the Senate. My legal career began as a law clerk on the Court of Federal Claims, during which time I participated in all manner of proceedings before the court. After clerking, I spent nearly two years as an associate at a law firm that largely specialized in Court of Federal Claims litigation. While at that firm, I was involved in nearly all stages of litigation in cases before the Court of Federal Claims and other federal courts. This work included drafting complaints, initial discovery requests, reviewing discovery, depositions, responding to motions to dismiss, drafting motions for summary judgment and supporting briefs, drafting pre- and post-trial motions and briefs, trial preparation, and drafting briefs appealing Court of Federal Claims rulings to the Federal Circuit and the Supreme Court in complex breach of contract and Fifth Amendment takings cases.

In addition to practice before the court, while I was a counsel on the House Judiciary Committee, I worked on resolutions to authorize congressional reference cases before the Court of Federal Claims and legislation to amend 28 U.S.C. § 1500 and the court’s contract dispute, bid protest, and military pay case jurisdiction. Beyond Court of Federal Claims issues directly, my legislative portfolio at House Judiciary predominantly consisted of matters related to federal court litigation. While I have extensive experience

in complex congressional investigations, including dozens of staff depositions, my legislative work has concentrated on legislation impacting litigation in federal court, such as legislation to: create or amend federal causes of action, amend federal court procedure and evidentiary rules, create or limit waivers of sovereign immunity against the United States, the states, and foreign governments, expand federal statutes of limitation and preempt state statutes of limitation, and enhance enforcement of congressional subpoenas. In working on legislation in these areas, I have regularly read judicial opinions, court rules, and secondary sources, and interpreted how existing statutes and proposed statutory changes apply.

I believe the experience I have gained on Capitol Hill will be invaluable if I am lucky enough to be confirmed, especially to this court in which trials are rare and without juries or a criminal docket. I also believe I would bring an increasingly unique perspective to the bench having served in the legislative branch as studies indicate that prior legislative experience has been decreasing on the federal bench in recent years.

**b. What measures are you taking to compensate for your lack of experience?**

I believe that my experience as a law clerk, an attorney in private practice, and as a counsel on both the House and Senate Judiciary Committees has prepared me to serve as a judge on the Court of Federal Claims. I will of course, as I have throughout my legal career, carefully study case law, treatises and other secondary sources, and federal and Court of Federal Claims rules as applicable in the cases that come before me if I am confirmed.

**Nomination of Zachary Noah Somers  
United States Court of Federal Claims  
Questions for the Record  
Submitted November 25, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. In 2004, you penned a note titled, “The Mythical Wall of Separation: How the Supreme Court has Amended the Constitution.”<sup>1</sup> In it, you argued that the First Amendment’s separation of church and state should not apply to states. You wrote, “The Establishment Clause, as it was originally understood by its framers and ratifiers, had a very limited dual purpose: to prohibit Congress from establishing a national church and to clarify that each state had a free hand in defining the meaning of establishment in its own laws and constitution.”<sup>2</sup>

- a. Do you stand by the position that the separation of church and state should not apply to states?

I stand by the position that as originally understood by the public at the time of its ratification, and prior to the adoption of the Fourteenth Amendment, the Establishment Clause was not intended to apply to the states.

- b. In the same note, you wrote that the Bill of Rights was not intended to be applied to the states. Do you stand by that position?

When the Bill of Rights was originally adopted it was not intended to apply to the states. *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243 (1833); *Lessee of Livingston v. Moore*, 7 Pet. 469, 551–552 (1833) (“[I]t is now settled that those amendments [in the Bill of Rights] do not extend to the states.”). It was only after the adoption of the Fourteenth Amendment that the Supreme Court has held that most of the guarantees in the Bill of Rights apply to the states.

- i. If so, do you believe it is constitutional for states to enact laws that would limit the Second Amendment rights of its citizens?

Please see my answer to Question 1(b).

2. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

To the extent that the term “originalist” refers to a method of constitutional interpretation by which clauses in the Constitution and its amendments are interpreted according to their public meaning at the time they were adopted, I consider myself an originalist. However, if confirmed, I will fully and faithfully apply all Supreme Court and Federal Circuit precedent regardless of the method of constitutional interpretation that was applied.

<sup>1</sup> Zachary N. Somers, *The Mythical Wall of Separation: How the Supreme Court has Amended the Constitution*, 2 GEO. J.L. & PUB. POL’Y 265 (2004) (SJQ Attachments at p. 2).

<sup>2</sup> *Id.* at 266.

3. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

To the extent that the term “textualist” means a method of statutory interpretation through which statutes are interpreted by their plain meaning at the time of their adoption, I consider myself a textualist. However, if confirmed, as a federal trial judge, I will fully and faithfully apply all precedent, regardless of the method of interpretation employed in the precedent.

4. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress’s intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

Statutory construction begins with the text of the statute itself. If the statute is clear on its face, there is no need to look any further. In cases in which ambiguity exists, a judge may consider a number of methods of statutory construction. In some cases, precedent may require a judge to examine legislative history in construing an ambiguous statute. If confirmed, I will follow all Supreme Court and Federal Circuit precedent on the use of legislative history.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn’t it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my answer to Question 4(a).

5. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

As I understand the term judicial restraint—that a judge decides only the case or controversy presented by applying the law to the facts and not reasoning to a pre-ordained result—I believe it is important.

- a. The Supreme Court’s decision in *District of Columbia v. Heller* dramatically changed the Court’s longstanding interpretation of the Second Amendment.<sup>3</sup> Was that decision guided by the principle of judicial restraint?

The opinions in *Heller* disagreed on whether the majority opinion was a departure from precedent. See *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008) (“We conclude that nothing in our precedents forecloses our adoption of the original

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<sup>3</sup> 554 U.S. 570 (2008).



understanding of the Second Amendment.”). As a judicial nominee, it is inappropriate for me to comment any further on whether judicial restraint guided the Supreme Court’s decision in *Heller*.

- b. The Supreme Court’s decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>4</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it is inappropriate for me to comment on whether judicial restraint guided a Supreme Court decision.

- c. The Supreme Court’s decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>5</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it is inappropriate for me to comment on whether judicial restraint guided a Supreme Court decision.

6. Since the Supreme Court’s *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>6</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>7</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

The right to vote is a fundamental right that must be protected. The issue of voter fraud is the subject of pending or impending litigation in federal courts and, therefore, as a judicial nominee, it would be improper for me to comment further.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my answer to question 6(a).

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my answer to question 6(a).

7. According to a Brookings Institution study, African Americans and whites use drugs at

<sup>4</sup> 558 U.S. 310 (2010).

<sup>5</sup> 570 U.S. 529 (2013).

<sup>6</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>7</sup> *Id.*

similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>8</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>9</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>10</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>11</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

I understand that there are studies and other evidence that indicate that there is implicit racial bias in our criminal justice system. I have not, however, read these studies or examined the evidence.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

I am aware that there are statistics showing that racial minorities constitute a larger percentage of individuals incarcerated when compared to their representation in the population at large.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I have not studied the issue of implicit racial bias in our criminal justice system.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>12</sup> Why do you think that is the case?

The disparities that you reference with regard to the sentencing of similarly situated defendants who commit the same crimes is a problem and an injustice. As a judicial nominee, however, it would be inappropriate for me to speculate on the possible causes for the disparities that you reference. I can only commit that if I am confirmed that bias, including racial bias, will have no place in my courtroom.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory

<sup>8</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>9</sup> *Id.*

<sup>10</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>11</sup> *Id.*

<sup>12</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

minimum sentences.<sup>13</sup> Why do you think that is the case?

Please see my answer to Question 7(d).

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

I believe that federal judges can be aware of the potential for implicit racial bias and work to ensure that no biases affect the fairness and impartiality that criminal defendants are entitled to.

8. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>14</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>15</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied this issue and, therefore, have not formed an opinion on it.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my answer to Question 8(a).

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

10. Do you believe that *Brown v. Board of Education*<sup>16</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes.

11. Do you believe that *Plessy v. Ferguson*<sup>17</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

<sup>13</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>14</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>15</sup> *Id.*

<sup>16</sup> 347 U.S. 483 (1954).

<sup>17</sup> 163 U.S. 537 (1896).

No.

12. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”<sup>18</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

As a judicial nominee, it is inappropriate for me to comment on the political statements of any elected official.

14. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>19</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Please see my answer to Question 13. With regard to the due process rights of immigrants, in *Zadvydas v. Davis*, the Supreme Court held that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” 533 U.S. 678, 693 (2001).

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<sup>18</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>19</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

## A P P E N D I X

**The following submissions are available at:**

*<https://www.govinfo.gov/content/pkg/CHRG-116shrg63792/pdf/CHRG-116shrg63792-add1.pdf>*

**Submitted by Senator Alexander:**

United States Attorneys for the Eastern District of Tennessee, Charles E. ("Chuck") Atchley Jr., support letter .....	2
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