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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

JULY 28, 2021

Serial No. J–117–8

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U.S. GOVERNMENT PUBLISHING OFFICE
58–688 WASHINGTON : 2026

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, JULY 28, 2021

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

The Committee met, pursuant to notice, at 10:08 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard Blumenthal presiding.

Present: Senators Blumenthal [presiding], Durbin, Whitehouse, Klobuchar, Coons, Hirono, Booker, Ossoff, Grassley, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

Also present: Senators Warner, Kaine, and Murphy.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Chair BLUMENTHAL [presiding]. The Judiciary Committee will come to order.

I welcome my colleagues. I welcome the nominees and their families and friends. I'm Richard Blumenthal acting as the Chairman in the stead of Senator Durbin, who is the Chairman, and I'm joined by Senator Grassley of Iowa, the Ranking Member.

Today we're going to hear from five judicial nominees and one nominee to the Department of Justice. Toby Heytens has been nominated to fourth circuit. Two nominees to the Eastern District of Virginia, Patricia Giles and Judge Michael Nachmanoff. Two nominees to the District of Connecticut, particularly proud of them, Sarala Nagala and Judge Omar Williams. And finally, Hampton Dellinger, who's been nominated to serve as Assistant Attorney General for the Justice Department's Office of Legal Policy.

I'm going to introduce the Connecticut nominees. We'll be joined shortly by two more of our colleagues, Senator Murphy and Senator Coons, who right now are in a Foreign Relations Committee mark-up. But before I introduce Ms. Nagala and Judge Williams, I have a few broad observations about the judicial nominees before us today.

These nominees are superlative. They are spectacularly qualified, and they represent a continued effort by the Biden administration and Senate Democrats to elevate individuals with impeccable credentials and experience, deep experience in the courtroom and in our judicial system, to our Federal judiciary. This slate of nominees also offers professional balance. We're going to hear from sitting judges, former public defenders, the Federal prosecutor, and a legal academic and appellate expert.

As someone who has spent his life, my life, in the courtroom basically as a litigator, I'm particularly proud of these nominees and really all the nominees we've seen so far from President Biden. And they offer a varied perspective that are too often missing from the bench. Our Federal courts and courts of appeals are well served when they reflect the full spectrum of professional legal experience as well as individuals who look like America and represent the values of diversity and inclusion that we all prize. And just as important, these nominees have been selected because they have the hallmarks of what makes a really good judge. Independence, fidelity to the rule of law, and respect for every individual, every individual who comes into their courtroom. Under the Trump administration we encountered nominees who were selected specifically because of outcome driven approaches to jurisprudence, and I am very gratified and relieved that the Biden administration's choosing nominees because of their qualifications and open-mindedness.

Two of the nominees before us today exemplify these qualifications and qualities. Ms. Nagala received her B.A. from Stanford University and her J.D. from the University of California, Berkeley School of Law. After law school she clerked for Judge Susan Graber on the ninth circuit and worked for a well-known preeminent law firm, Munger, Tolles & Olson in San Francisco for 3 years. For nearly a decade, Ms. Nagala proudly served United States Attorney's Office for the District of Connecticut, the office that I headed for 4½ years. She served as an assistant United States attorney, and she worked particularly in the office's human trafficking and hate crimes section. She was the coordinator for that work. In this role she was instrumental in the prosecution of Baitul Aman Mosque shooter. Her years of experience as a Federal prosecutor will be invaluable for the District of Connecticut as a judge.

I'd also like to add that Ms. Nagala, if confirmed, will be the first person of Asian and South Asian descent to serve as an Article III judge in the District of Connecticut, and I am thrilled, just to repeat, can't repeat too many times, that President Biden continues to nominate individuals who will bring personal and professional diversity to the Federal bench.

And I might just add also Ms. Nagala has strong support from the legal community in Connecticut and from around the country. Former Federal prosecutors and criminal defense attorneys have written to us that Ms. Nagala is a, quote, "Fair and open-minded advocate who has effectively reached just results as a prosecutor," and I can tell you as a former United States attorney, there's no higher praise than to have your adversaries, adversaries only in a courtroom, public defenders say that you reach just results. Anti-trafficking advocates in Connecticut wrote to this Committee that Ms. Nagala is a, quote, "professional diplomatic and respectful", end quote, advocate but also, quote, "responsive and collaborative," end quote, and that if confirmed she will be ethical, fair, and just, and will work to ensure the rights of all parties who come before her. The South Asian Bar Association of North America noted that Ms. Nagala's appointment will be profoundly meaningful, and I'm quoting "profoundly meaningful," to the growing South Asian legal community across North America and that her, quote, "unwavering commitment to vulnerable populations ensure that she will serve

with fairness, compassion, and humility," end quote. More than 40 of Ms. Nagala's former law firm colleagues also wrote to this Committee to note that, quote, "she adheres to the highest ethical standards and is committed to follow the law," end quote, and she will make a positive and long-standing contribution to the judiciary and the legal system. I'm pleased that her nomination has come before this Committee.

I also want to introduce Judge Omar Williams, who received his B.A. in 1998 and his J.D. in 2002, both from the University of Connecticut. He has served as a judge on the Hartford Superior Court since 2016, but he first joined the bench in New London in 2014, so he has very, very substantial experience on the bench in State court already. But in the years between graduating from law school and becoming a judge, Omar Williams had an 11-year career as an assistant public defender in Connecticut, where he built a reputation as an accomplished and expert litigator and advocate. I know his experience as a public defender will undoubtedly provide an under-represented and much-needed perspective to the Federal judiciary, and without any aspersions on prosecutors, they are more likely to be represented on the Federal bench than public defenders, so his nomination is particularly significant at this moment in our history. Judge Williams also serves on Connecticut's Sentence Review Division and Wire Tap Panel, a position to which he was nominated by the chief justice of the Connecticut Supreme Court. The chief justice also selected Judge Williams to serve on a New England Region Opioid Initiative, given his deep understanding of the challenges that the opioid epidemic imposes on the judicial system.

Since taking the bench, Judge Williams has consistently, and I mean consistently and constantly shown a level-handed, balanced approach to deciding cases, fairly treating both prosecutors and defense attorneys in cases before him. And you don't need to take my word for it. Nineteen Connecticut assistant State's attorneys or State prosecutors who have worked with or appeared before Judge Williams wrote to this Committee in unanimous and strong support for his nomination to the District of Connecticut. They went on to say, quote, "He is clear, cogent, and decisive. His findings were thoughtful and well received. His decisions reflect his own evaluations and not those of the prosecution or defense. He is a highly gifted jurist," end quote. I agree, and I know Judge Williams measured and insightful, incisive approach combined with his judicial experience will make him highly qualified to serve on the District of Connecticut.

So, in conclusion, I urge all my Colleagues to support Ms. Nagala and Judge Williams, and I look forward to their swift confirmation. With that I will turn to the Ranking Member Senator Grassley for his opening remark.

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

Senator GRASSLEY. I'm sure I'm going to shock my Democratic colleagues when I speak very positively about each of these nominees because often that's not the case.

I'm going to start with General Heytens. I think the word mainstream is thrown around too often to describe judicial nominees who clearly hold activist judicial philosophies. It's a word that people use to cover up extremism. This is an unusual hearing in that General Heytens I think I see as a mainstream nominee. The best I can tell, he's exactly the kind of circuit judge I'd expect to be nominated by a Democrat president. He'd have been right at home under Obama or Clinton. In fact, in many ways, General Heytens reminds me of a Trump nominee. He graduated from a good law school, clerked on the Supreme Court, has diverse experience ranging from private practice to academia to public service. And as Virginia's solicitor general, he's advocated zealously on behalf of his clients, the Commonwealth of Virginia, to defend the laws that the people of Virginia have enacted.

I'm sure I won't agree with every opinion of this nominee as he writes—if he is confirmed as a judge. I bet I don't agree with his politics, but I believe he could serve as a moderating force on the fourth circuit which is an activist court that's well outside the mainstream of Federal appeals courts. With a Democrat president, in a State with two Democrat colleagues who are here, I'm not sure that we could hope for anything better than a smart experienced liberal with misfortune of extensive experience before the increasingly erratic fourth circuit.

Ms. Giles and Judge Nachmanoff also seem like well qualified picks for their seats. Ms. Giles is a prosecutor of considerable renown, while Judge Nachmanoff was previously the Federal defender in his court. He has a judicial record that we can evaluate as a magistrate judge. This will help us see if he's a Bill of Rights judge like the dozens of public defenders who recently came out in support of the Second Amendment before the Supreme Court or a criminal defense judge like this administration other picks.

The same can be said for Connecticut, where Judge Williams is also a former public defender with a judicial record, and Ms. Nagala is a well-known prosecutor. Ms. Nagala has argued against some basic constitutional rights under the Second Amendment, so I'll probably want to ask her about that.

Last, Mr. Dellinger, who's been nominated to run the Office of Legal Counsel. We had a good conversation and—over the phone, and I'm eager to learn more about his views of the Justice Department.

Chair BLUMENTHAL. Thanks, Senator Grassley. We're fortunate to be joined by the real Chairman of the Committee, Senator Durbin. Thank you for joining us, Senator. If you have any opening remarks, we'll be glad to hear from you.

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

Chair DURBIN. Very briefly, I'm glad to be here in what is largely a Connecticut/Virginia day. And I'm not going to allow the largely positive statements by Senator from Iowa deter me from my support of these nominees. I think a good indication of their quality, as are most of the—if not all of the nominees from the Biden administration, and with your colleague waiting for his turn and two

former Governors of the Commonwealth of Virginia, I'm going to close my remarks.

Chair BLUMENTHAL. Thanks, Senator Durbin.

We are joined by two of our most esteemed colleagues and my great friend and wonderful colleague from Connecticut, who has worked with me in recommending nominees to the bench. I'm going to call on them now, and just for everybody attending, we are very, very grateful that they are joining us. It's a very, very busy morning in the Senate, and each of them has taken time from other obligations to be here, and we thank you very much.

I'll first call on Senator Warner, who will introduce three of our nominees: Mr. Heytens, Ms. Giles, and Judge Nachmanoff.

STATEMENT OF HON. MARK R. WARNER,
A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Well, thank you. I was actually going to call you Chair Blumenthal, but so much for that. But Senator Blumenthal, thank you. Chair Durbin, Members of the Committee, Ranking Member Grassley. I will say that to my friends who are coming before the Committee, it is—those were great words of praise from Ranking Member Grassley, so I appreciate his comments.

Today it is my distinct honor to introduce three fellow Virginians, and they are all outstanding public servants: Mr. Toby Heytens, nominated to serve on U.S. Court of Appeals for the Fourth Circuit; Ms. Patricia Tolliver Giles, nominated to serve as a U.S. District Court Judge for the Eastern District of Virginia; and Judge Michael Nachmanoff, also nominated to serve as a U.S. District Court Judge for the Eastern District.

All three of these nominees, I think, have exemplary credentials. They have all demonstrated a commitment to public service and have a strong and broad-base support from the legal community.

Toby is joined today by his spouse, Sarah, his sister, and his parents, Bill and Sally, and his sister Heidi. Toby currently serves, as Senator Grassley indicated, as solicitor general for the Commonwealth of Virginia. He earned his bachelor's degree from Macalester College and went on to receive his J.D. from the University of Virginia School of Law. Toby began his legal career serving as a clerk for Chief Judge Edward Becker in the U.S. Court of Appeals for the Third Circuit. He then clerked for the late Justice Ruth Bader Ginsburg. Toby is dedicated to developing skills in young lawyers through both his extensive teaching and mentoring at UVA and has demonstrated an abiding commitment to diversity.

Next, I'm pleased to introduce Patricia Tolliver Giles, nominated by President Biden to serve as U.S. District Court Judge for the judge—for the Eastern District of Virginia. I'd like to welcome Patricia's son, Pierce, her mother, Ollie, siblings Felicia, Johnny, and Jonathan, and her niece Lauren, who are both here and in the second row. Patricia is a native of the Commonwealth and a two-time graduate of UVA. Patricia began her legal career as a clerk for Hon. Gerald Bruce Lee, both on the Nineteenth Judicial Circuit of Virginia and in the U.S. District Court for the EDVA. Patricia has served almost two decades in the Alexandria office of the U.S. Attorney for the Eastern District of Virginia and is currently the

managing AUSA for the Alexandria office. She has also been active in Kamp Kappa Street Law program, a week-long camp for at risk boys ages 10 to 16. It features a street law program designed to introduce the boys to a judge—to law through a mock trial.

Finally, I'm pleased to introduce Judge Michael Nachmanoff, who currently serves as a magistrate judge in the Eastern District. The judge is joined by his wife, Kiki, and two of his three daughters, Anna and Charlotte, and I understand his eldest daughter, Clara, is actually in California but has promised to get up and at least be watching this online. So I know she hopefully is tuning in.

The judge earned his bachelor's degree from Wesleyan University and attended law school at the University of Virginia. He clerked for Hon. Leonie Brinkema in the Eastern District of Virginia. For 13 years, Judge Nachmanoff served as a Federal Public Defender for the Eastern District. Since his appointment to the bench in 2015, the judge has heard a wide range of cases on civil litigation matters and criminal matters, all while presiding over the Alexandria Reentry and Recovery Program, a weekly drug court program that provides treatment support for defendants suffering from chronic substance abuse.

I will echo what, Senator Blumenthal, you have said, the distinguished Ranking Member said, these are three nominees that Senator Kaine and I wholeheartedly endorse. We think they bring the right experience, the right life experiences, and clearly broad-based support from the legal community, and I urge the Committee's rapid consideration of all three. Thank you.

Chair BLUMENTHAL. Thanks, Senator Warner. We'll now turn to Senator Kaine, also Virginia, for his remarks.

STATEMENT OF HON. TIM KAINE,
A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator KAINE. Thank you to the Committee for having the hearing and pulling these great Virginian nominees together. It's great to be together with my colleague, Senator Warner. He and I were in law school together, and he always famously says, "Tim became a lawyer, and I became a client."

And I'm here to recommend heartily these three individuals because I practiced law heavily before these courts in the 17 years that I was in private practice. And they are excellent matches for these very unique courts. Since Mark has done such a good job in describing the qualities of these nominees, let me just tell you a bit about the two courts, Eastern District of Virginia and fourth circuit, and why they fit so well.

The Eastern District of Virginia's an unusual court. Some of you know this because of your service on this Committee. It's called the rocket docket in the Eastern District of Virginia. It has traditionally now, for decades, have one of the fastest dockets of any court, from the filing of the case to the end of a case. And it is a tough thing to do for the judges and for the lawyers, but the reason the EDVA has stuck with the rocket docket is it's the right thing to do for the parties who appear before the court. The court has had an understanding that it's a painful thing to be a party in a criminal or civil matter, and one thing we ought to do is try to deliver you a decision in a reasonable period of time. EDVA also is unusual be-

cause it has a very high percentage of national security related cases because of the presence of both the Pentagon and the CIA and other agencies in the geographic jurisdiction. So these two district court nominees, Patricia Giles, who's been kind of a pillar of the U.S. Attorney's Office in the EDVA, and Judge Michael Nachmanoff, first as a public defender and as a magistrate judge, they understand the importance of this court, the unique traditions of it. They're well regarded by the judges and litigants who practice before the EDVA, and their backgrounds speak for themselves, as Senator Warner indicated.

The fourth circuit is also unusual. I practiced before the fourth circuit, and they have a tradition that I don't know that any other circuit follows, and that is at the end of every argument, the fourth circuit judges come down off the bench and they file in front of the counsel table to shake the hands of every attorney that argues before it. And that's a tradition that also goes back a very long while, and it's an effort by the fourth circuit, whatever the composition, whoever nominated the judges, to be a place of civility.

Toby Heytens has a tremendous track record as an appellate advocate and an academic, but I think anyone who meets with Toby or sees him do his work will understand that he really exemplifies a standard of civility which we should all aspire to but certainly we need in our judicial nominees.

And so I recommend all three without hesitation. I'm pleased to be here with my senior Senator to say these are some great Virginians and they'll be superb additions to the Federal judiciary.

Chair BLUMENTHAL. Thanks, Senator Kaine. I now turn to my colleague from Connecticut, Senator Murphy.

STATEMENT OF HON. CHRISTOPHER MURPHY,
A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator MURPHY. Thank you very much, Mr. Chairman, to the Ranking Member, to Chairman Durbin. Thank you for allowing the three of us to appear before you. Senator Blumenthal did a very adequate job of explaining the merits of both of the candidates who are before this Committee today, and so I will just offer brief additional remarks.

These are two nominees that have had very difficult jobs in their respective roles in the State's criminal justice system. Judge Williams is relatively new to the superior court. He was nominated by our Governor in 2014, but in one of his recommendations, a colleague described his meteoric rise because only 2 years after his appointment to the State bench he was named the presiding judge over the criminal docket in Hartford. And while I don't know the Connecticut court system as well as Senator Kaine knows Virginia's Federal court system, what I do know is that that's one of the busiest dockets in the entire State. He has handled it admirably, thus he is recommended today both by those who appear on the prosecutor's side and the defense side. But in his application, he talks a lot about the professional diversity that he believes, that Judge Williams believes, makes him a better judge. We have highlighted the fact that he spent time as a public defender before coming to the bench, but he notes in his application that he also spent time as a service technician for a telephone company, a house

painter, a waiter, and a TV rental agent, and all of those experiences, in his mind and in our mind, made him and make him a better judge.

Sarala Nagala is impressive in her own right. A very difficult job as the deputy chief of the major crimes unit. She has this very specific focus on hate crimes and crimes relating to human trafficking and child exploitation. Difficult job to get up and do and then come home at night with. But what I really think is important about her application is that she, in her role as a prosecutor, has understood that in order to make the criminal justice system more effective, she had an obligation to extend herself beyond the prosecutor's office. And so she led this incredibly innovative partnership whereby she trained, with a team, 1,200 police officers in Connecticut on cultural competency. She went on and worked with the Anti-Defamation League to train Connecticut educators on anti-Muslim and anti-Sikh bias and bullying. She obviously has risen very quickly as a young prosecutor to the deputy chief of the major crimes unit.

Just like Judge Williams, she has had a meteoric rise, but she has also found time to understand the importance of living in her community and building out a support system for prosecutors in police departments and in our educational system. So I'm just thrilled to be able to associate myself with these two nominees as well as the Virginia nominees.

Thank you for allowing us to say a few words today. Thank you, Mr. Chairman.

Chair BLUMENTHAL. Thanks, Senator Murphy. I'd like to turn to Senator Coons to introduce Mr. Dellinger.

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

Senator COONS. Thank you, Senator Blumenthal. It's my pleasure to introduce President Biden's nominee to be the Assistant Attorney General of the United States for the Office of Legal Policy, the Department of Justice.

Mr. Hampton Dellinger's been a friend since we got to know each other in law school, and I think he will serve our Nation excellently in this position. As a Committee we are responsible for crafting policy, empowering the Department of Justice to enforce the law, to ensure public safety and a secure equal justice for all Americans. We also work to protect and maintain our judicial branch. Inside the Department of Justice, the Office of Legal Policy covers similar ground. The Office of Legal Policy develops and implements the department's strategic policy initiatives, coordinates between different elements of the Department and other Federal agencies, and advises the Attorney General on policy matters and candidates for judicial nominations.

Hampton—Mr. Dellinger, forgive me, is an outstanding choice to lead the Office of Legal Policy in its mission. He has sterling qualifications, broad experience in legal practice in government, and is a fiercely dedicated advocate for equal justice and civil rights.

Mr. Dellinger's roots are in North Carolina. He grew up there, and after graduating college from the University of Michigan and attending the Yale Law School, Mr. Dellinger clerked for Judge J. Dickson Phillips Jr. on the fourth circuit, although he did briefly

sojourn in a large Washington DC, firm, Hampton decided to build his legal career in his home State of North Carolina. He returned there and dove into public service. He worked for the North Carolina Attorney General's Office as special counsel, ultimately rising to deputy attorney general. He later became chief legal counsel for the North Carolina government. There Mr. Dellinger oversaw judicial nominations and helped identify talented diverse candidates for the bench and helped markedly increase the number of women trial judges in the State. Made gains in the number of Black judges on the State bench and appointed—help support the appointment of the first Hispanic judge of the State's history, then Judge Albert Diaz, later appointed to the fourth circuit by former President Obama.

After his work in State government, Mr. Dellinger moved to private practice, and for the last 18 years, he's advised clients on complex issues and litigating cases in State and Federal court. After nearly two decades as a partner with distinguished law firms, Mr. Dellinger recently opened his own law practice, and he has had, in my view, a broad and balanced private practice career and made a significant dedication of his time to pro bono representations.

Hampton has a professional reputation as an inclusive bridge-builder. I know him to be a humble and generous person with a great heart, a loving father to his two children, husband to his wife Jolynn, and a good friend.

In his public service and as a practicing attorney, Hampton Dellinger has a demonstrated track record of advocating for social justice and racial and gender equality, and the Committee has received many letters in support of his nomination from business owners, faith leaders, current and former Federal and State law enforcement officials, the Eastern Band of Cherokee Indians and attorneys supporting Tribal sovereignty, and others, including the North Carolina State conference for the NAACP.

I urge my colleagues to support his nomination and his swift confirmation. Thank you, Mr. Chairman. I appreciate the opportunity to offer this introduction.

Chair BLUMENTHAL. Thanks, Senator Coons. Our custom is to begin with the appellate court nominee, and that is Mr. Heytens and then we'll have the second panel with the district court nominees and Mr. Dellinger, so if Mr. Heytens would please come forward.

And our custom is also to swear in all the witnesses. So let me administer the oath to you.

[Witnesses are sworn in.]

You may proceed with any opening remarks that you may have, Mr. Heytens.

STATEMENT OF TOBY HEYTENS, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Mr. HEYTENS. Good morning and thank you. I'd like to begin by thanking Chairman Durbin and Ranking Member Grassley for scheduling this hearing, to Senator Blumenthal for chairing it, and to the President for nominating me. I'd also like to particularly thank my home State's Senators, Senators Warner and Kaine, first

for recommending me to the President and for their warm introductions this morning.

I'd like to take a chance to introduce the members of my family who are here with me today and to acknowledge just a few people who could not be. My parents, Bill and Sally, and my sister, Heidi, all traveled here from their and my hometown of Superior, Wisconsin, and I'm very grateful to them for that.

My brother, Troy, and his family I know are watching from their home in Metairie, Louisiana, and I'm looking forward to seeing them in just a few days in our mutual hometown of Superior, Wisconsin. Last, but not least, I need to thank my spouse, Sarah Sawtelle, for more things than I could possibly go into in the short time I have this morning.

I'd like to close by acknowledging two extraordinary people who I very much wish could have been here today, the late Edward R. Becker and the late Justice Ruth Bader Ginsburg. They were the first two Federal judges that I ever knew personally, and they were two of the finest human beings that I have ever met.

I am honored and humbled by this nomination, and I look forward very much to answering your questions. Thank you.

Chair BLUMENTHAL. Thanks very much. We'll now have a round of 5-minute questions, and I'll begin.

Let me start where you just finished with the two judges, particularly Judge Ruth Bader Ginsburg. You have an extraordinary background, very, very impressive, not only clerking but obviously as a distinguished academic and accomplished litigator, having argued 10 cases before the U.S. Supreme Court and having served most recently as Virginia's solicitor general.

What lessons do you take from your knowledge, your personal knowledge and your experience with Federal judges, the ones you've known and the ones before whom you have litigated?

Mr. HEYTENS. Thank you for that question, Senator Blumenthal. I have learned an extraordinary amount pretty much from every Federal judge that I've had the extraordinary fortune to have ever gotten to know. And I actually think that the biggest things I would take away from the two judges for whom I clerked, who were appointed by Presidents of different political parties, but I think the things that I learned, the biggest things I learned from the two where the same.

You know, the first is to take, and the importance of taking, every case at a time and very seriously. You know, when I clerked for them, Judge Becker had been a judge longer than I had been alive and Justice Ginsburg was getting very close to having been a judge for longer than I had been alive, and they both worked extraordinarily hard on every single case, because I think they recognized that for the parties, that case is their one case perhaps before the courts and it is vitally important that judges treat every case and every litigant with respect.

I think another thing I learned from both of them is the importance of separating people and ideas or separating legal disagreements with personal dislike, I guess I'd say. Much has rightly been made of Justice Ginsburg's decade-long close personal friendship with her great friend, the late Antonin Scalia. And Judge Becker as far as I can tell knew every single person in the city of Philadel-

phia which was a city that he had grown up in and spent his entire career both before and after becoming a judge.

And so I think judges have a very important job and a very important role, but they're people, and it's vitally important to remember that and to treat everyone you encounter with civility and respect.

Chair BLUMENTHAL. One other question. As frequency happens here, many of our nominees have past associations, they've belonged to various groups over the course of their careers, and I think another one of the lessons from both of those judges' careers is that they put aside their personal views, their political perspectives. Would you anticipate doing the same?

Mr. HEYTENS. Absolutely, Senator Blumenthal. As you mentioned and some others have mentioned, the very first job I had out of law school was as a law clerk to a Federal judge. And the second job I had was while working at the Department of Justice, so my very first two jobs out of law school were one as an assistant to a person whose job was to apply the law, and the other was as an advocate on behalf of people who were advocating on behalf of their client. That was the Federal Government.

The role of advocate and the role of judge are incredibly important, but they are different roles. In fact, our system depends on the notion they are different roles. The job of an advocate is to make the best case he or she can on behalf of their client, and the job of a judge is to listen to the arguments, analyze the record and apply the law to reach a correct outcome, and I'm absolutely committed to doing that if I were fortunate enough to be confirmed.

Chair BLUMENTHAL. Thank you very much. I'll turn to the Ranking Member.

Senator GRASSLEY. Congratulations on your nomination. Before I get to questions, I wanted to talk about Justice Thomas writing a touching tribute to his former colleague and your former boss, Justice Ginsburg. This is what Judge Thomas said, "Justice Ginsburg and I often disagreed but at no time during our long tenure together were we disagreeable with each other. She placed a tremendous premium on civility and respect. This approach did not lessen her strong convictions but rather facilitated a respectful environment in which disputes furthered our common enterprise of judging. Whether in agreement or disagreement, exchanges with her invariably sharpened our final work product."

I notice that, like Justice Ginsburg, you seem to have a capacity to work with, debate, and learn from people you probably disagree with. You wrote letters supporting the nominations of Judge Thapar and Judge Stras, both of whom were President Trump's Supreme Court shortlist.

In your legal publications, you have thanked conservatives like Paul Clement, Judge Neomi Rao, for helping with your scholarship. You've spoken at the Federalist Society event. Has working with people that you may disagree with sharpened your legal arguments? Has it made you a better lawyer?

Mr. HEYTENS. Absolutely, Senator Grassley.

Senator GRASSLEY. It seems to me that you probably worked with many originalists in your years as a lawyer. Do you know any

originalists who might want to overturn *Brown v. Board of Education*?

Mr. HEYTENS. Senator Grassley, I certainly suspect that I have worked with people who would identify themselves as originalists. I don't feel it's my place to say whether someone else would identify themselves a particular way or not. I guess I would say I've met very few people in my life who have expressed interest in overturning *Brown v. Board of Education*.

Senator GRASSLEY. Thank you for that answer. My last set of questions.

You spent the last 3 years or so as solicitor general. In that role you've argued a number of views that I'm sure myself and many of my colleagues might disagree with. I'm sure you're aware that many of President Trump's judicial nominees had also served as State solicitor general, like Kyle Duncan, Britt Grant, Andrew Brasher, and Eric Murphy, just to name a few. Is it fair to say that you have many arguments you may or may not agree personally with that you've had to make before the courts?

Mr. HEYTENS. Thank you for that question, Senator Grassley. I have spent a long time litigating both on behalf of the Federal Government, on behalf of the State government, and in private practice. I take my obligations, my ethical obligations as a lawyer very seriously, so I don't think I'm permitted to identify any cases where I did or did not personally agree with an argument that my client was making.

I think I can say without violating my obligations that there may have been cases that did or did not better or worse align with my own personal views, but that's because that's not the role of an advocate. The role of an advocate is to represent their client and make arguments on behalf of their client.

Senator GRASSLEY. I think you just answered my next question but I'm going to ask it anyway. Aren't you duty bound to zealously advocate on behalf of Virginia's interest as solicitor general?

Mr. HEYTENS. Absolutely, Senator Grassley.

Senator GRASSLEY. Can you describe the differences in roles between being a judge and being a State solicitor general? That's my last question.

Mr. HEYTENS. Of course, Senator Grassley. I think the roles are complimentary in the sense that both the role of advocate and the role of judge are necessary to make our system work the way it is supposed to. But they are different, fundamentally different roles. The role of an advocate, whether for the State government, whether for the Federal Government or a private party, is to advocate on behalf of their client. The role of a judge is to apply the law and reach the correct outcome in a particular case.

Senator GRASSLEY. Thank you.

Mr. HEYTENS. Thank you.

Chair BLUMENTHAL. Thanks, Senator Grassley. Senator Durbin.

Chair DURBIN. Thank you very much, Chairman Blumenthal. Thank you for being here Mr. Heytens. I appreciate it.

I noticed here when we asked you, of all the cases that you've been involved in, to pick your 10 that were the most significant litigated matters in which you personally were involved, on the list of 10 were 2 or 3 pretty hot political topics. The removal of the Robert

E. Lee statue in Richmond, the D.C. Sniper case. COVID–19 case involving Gold's Gym franchises, and a couple which were more obscure, like uranium mining in Virginia which I don't know much about. I'm really trying to put this into perspective of your experience in that role of advocating in those cases and the controversy that might have been associated with them and the impact it had on your experience, your judgment, even your personal relationship with people in the community.

Mr. HEYTENS. Thank you for that question, Mr. Chairman. As you mentioned, I have been involved—I'm sorry. I realized my mic was off. As you mentioned I have been involved in several very high-profile matters, particularly in the last few years in my role as an advocate for the Commonwealth of Virginia. You know, those cases all raised interesting and difficult challenges. The *Malvo v. Mathena* case you mentioned, obviously it was something that had been going on for a very long time before I started representing the Commonwealth of Virginia in that case. I became involved only at the U.S. Supreme Court phase, after, actually it turns out, a decision of the United States Court of Appeals for the Fourth Circuit in that case.

The Lee monument litigation was very different. I was involved in that case basically from the moment that it was filed. I remember getting the phone call about the litigation having been filed, and the reason that case, I think, is so significant is it's one of, if not the only case I've ever been involved in literally from beginning to end, from the moment—from the moment there was a request for a temporary injunction through the trial on the merits, through post-trial proceedings and all the way to the State Supreme Court.

And then some of the other cases you mentioned. I mean, it has been an extraordinary——

Chair DURBIN. So let me dwell on the Lee monument case for a moment because the point I'm trying to get to is what kind of outside influence/pressure did you feel in the responsibility that you had for Commonwealth?

Mr. HEYTENS. Pressure, I would guess I would say, in the sense of one of the things that's so significant about government service is the knowledge that you're never just representing an individual in the way that you sometimes are in private practice. You are representing the Commonwealth as a whole. You're representing the Governor. You're representing the elected officials, the General Assembly of Virginia. I think that's one of the things that makes public service so thrilling, but it also can make it a little scary sometimes as you realize this is a big responsibility.

I wouldn't say pressure—and so I'd say pressure in a sense of a felt obligation you really need to do very well. This is an important case. A lot of people are paying attention to it. But at the end of the day, litigation is litigation, and you do the absolute best you can and hope for the best result you can for your client.

Chair DURBIN. And your relationship with opposing counsel after?

Mr. HEYTENS. I would say very positive, Senator. One of the great thrills of my life, I remember one of the cases that I did that's mentioned on my form was actually an oral argument against my old boss, Paul Clement, who was representing the other

side, and this is in the Bethune-Hill litigation. And, you know, I think he was obviously someone I had known before and since then, but I've also gotten to know opposing counsel in a number of these cases, and I have worked as hard as I can to treat my opposing counsel with respect, to separate the personal and the legal, and I believe I've had a very positive relationship with my opposing counsel in all my cases.

Chair DURBIN. Thanks for your answers. Thank you, Mr. Chairman.

Mr. HEYTENS. Thank you.

Chair BLUMENTHAL. Thanks, Senator Durbin. Senator Kennedy.

Senator KENNEDY. Professor, you're on leave from the faculty at Virginia Law, are you not?

Mr. HEYTENS. I am, Senator.

Senator KENNEDY. One of your colleagues, Professor Paul Stephan, tells me you are a rock star.

Mr. HEYTENS. That is very kind of him to say that, Senator. Professor Stephan is a wonderful person.

Senator KENNEDY. Yes. I went to law school with him. He may be the smartest guy I've ever met. He deserves to be on the Federal bench, frankly.

I've been listening to you carefully. You don't sound to me like you're much of politician. I like that. I'm going to ask you a couple of questions. I want to stipulate up front, Professor, you're going to follow precedent, and I know you've been coached. I'm not blaming the Biden White House. The Trump White House did it too, you know, coach all of our nominees to just say, "We're going to follow precedent." I think you'll follow precedent anyway, but I'm not going to ask you to tell me how you decide a case. That would be unethical. Might be legal, but it would be unethical.

But I do want to know how you think. Let's take a new right. Let's—I'm not going to try to talk to you about the relationship between a fundamental right and a suspect classification because you'll beat me on that one, but we both know that they both used to create new rights. Let's take wealth, wealth as a suspect classification. Do you think heightening the scrutiny of wealth as a social economic policy, socio-economic policy, is a decision for the voters through their legislative body or the courts?

Mr. HEYTENS. Senator Kennedy, I believe the Supreme Court has already confronted the question of whether wealth is a suspect class——

Senator KENNEDY. I know.

Mr. HEYTENS [continuing]. And that they concluded——

Senator KENNEDY. *Rodriguez*, but they could—once again, I'm not talking about—I know they said no, but I'm just asking—asking you to put your law professor hat on.

Mr. HEYTENS. Well, like I said, Senator Kennedy, I think that the Supreme Court in deciding *Rodriguez* has essentially said that it is a matter for the legislature not a matter for the courts, and if I were confirmed as a lower court judge I would follow that guidance from the Supreme Court.

Senator KENNEDY. Okay. We know, you've probably taught it, we know that the right to use contraceptives is a penumbra of the—let's see, you correct me if I'm wrong—First, Third, Fourth, Fifth

Amendments to the Constitution. Now you don't find the words "right to use contraceptives" in the Constitution, and I personally think people ought to have the right to use contraceptives, by the way, but we know that that right was found as a penumbra of those amendments in *Griswold v. Connecticut*. But we can't see it in the Constitution. Is that a pretty fair statement?

Mr. HEYTENS. Senator Kennedy, I would agree that the word contraception is not in the Constitution, and like you, my understanding is that the Supreme Court decision that recognizes that right is *Griswold v. Connecticut*, yes.

Senator KENNEDY. Okay. Are there other penumbras that we can't see?

Mr. HEYTENS. Senator Kennedy, I'm not aware of any Supreme Court decision other than *Griswold* that used the specific word penumbra. I think——

Senator KENNEDY. Do you think there are other penumbras out there, lurking out there that we can't see?

Mr. HEYTENS. Senator Kennedy, I'm not sure that I think there are other penumbras out there that we can't see because, as I think I've said, I think the only time the Supreme Court has ever used that specific word is in *Griswold v. Connecticut*. The Supreme Court has, for at least 130 years, concluded that the Constitution protects certain rights, such as the right to marriage, the right to travel, the right to raise children, that are not expressly set out in the text of the Constitution.

Senator KENNEDY. Professor, I don't really care about your politics. I care about your intellect which is, I think, pretty well established. And I care about your analytical abilities. I care about your integrity, and I care about your understanding of the role of the judiciary. And some of the nominees that have appeared before us, I believe, see it as their—see their role as a Federal judge to try to rewrite the Constitution and/or our statutes every other Thursday to advance a social agenda that they can't get by the voters through their elected representatives, and I don't agree with that. I don't get the impression that you're like that. I'll give you the last word.

Mr. HEYTENS. Well, thank you for that, Senator Kennedy. I think the role of a judge is very important, but I think it is a limited one. I think it is of—I don't—I think it is the role of the judge has the important role to apply the law to the facts before him or her in the cases that come before them.

Senator KENNEDY. Thank you, Mr. Chairman.

Chair BLUMENTHAL. Thanks, Senator Kennedy. I see no additional colleagues on our Committee to pose questions to you, Mr. Heytens, so thank you very much for joining us. We're honored to have you. And I will now call the next panel, which are the district court nominees and Mr. Dellinger.

[Witnesses are sworn in.]

Chair BLUMENTHAL. Welcome to the Committee. We will ask you if you have any remarks, opening remarks, we'll go down the panel and ask each of you to give them. Ms. Giles?

**STATEMENT OF PATRICIA TOLLIVER GILES,
NOMINEE TO SERVE AS UNITED STATES DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA**

Ms. GILES. Thank you. I would like to start by thanking you, Senator Blumenthal, for presiding today. I would also like to thank Chairman Durbin and Ranking Member Grassley for setting this hearing, and all the Members of the Judiciary Committee for considering my nomination. I would also like to thank President Biden for the honor of this nomination, and Senator Warner and Kaine for recommending me to the President, for their trust and confidence that they've placed in me, and their kind words of introduction for me today.

This is truly the honor of my professional life, and I thank the Lord for this day, for the grace that He has shown me over the years, and for how far He has brought me in my life.

I would also like to take this opportunity to introduce and thank my family who is attending with me today, starting with my mother, Ollie Tolliver, who is the daughter of a sharecropper, born and raised in rural Mississippi. And for me, my mother is the personification of strength, faith, love, and wisdom, and she has always been and will always be my North Star.

I'd like to acknowledge my three siblings, Felicia, Johnny Jr., and Jonathan, and my niece, Lauren, who have supported me my entire life.

And finally, but certainly not least, my son, Pierce, who is my inspiration and has done a great job taking care of me over the years.

I would also like to acknowledge two people who aren't with me today physically but who I carry with me in my heart each and every day of my life, and that is my beloved husband, Gene, who was my best friend, and my father, Johnny Tolliver. And I know that they are both smiling in heaven today.

I would also like to thank my extended family of nieces, nephews, in-laws, my aunts, uncles, and cousins, my friends, my mentors over the years, my church family, my colleague in the U.S. attorney's office, and members of the Defense Bar and the entire court family at the Alexandria Division who have supported me over the years.

And I'd especially like to thank Judge Gerald Bruce Lee for giving me the honor of being his first Federal law clerk and for launching my legal career.

And with that, I welcome your questions.

Chair BLUMENTHAL. Thank you very much, Ms. Giles. Mr. Nachmanoff.

**STATEMENT OF MICHAEL S. NACHMANOFF,
NOMINEE TO SERVE AS UNITED STATES DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA**

Judge NACHMANOFF. Thank you. I'd like to start by thanking Chairman Durbin and Ranking Member Grassley for scheduling this hearing today, Senator Blumenthal for chairing the hearing, and the entire Committee for considering my nomination. I'm very grateful to Senators Warner and Kaine for recommending me to the President and for their kind introductions this morning. I'd like

to express my deep gratitude to President Biden for nominating me.

I would not be here today without the unwavering love and support of my family. My father's distinguished career in Government, which includes service in the Navy, Treasury, and State Departments and on the National Security Council, has been a model for me as I pursued my own career in public service. He's watching from home today, and I want to thank him for his love and all that he has done for our family and this country.

My mother's no longer with us, but her joyful spirit lives on in me and all of those who are the beneficiaries of her boundless energy and love.

My brothers, David and Jeffrey, have always been an inspiration to me and I'm grateful for their support and that of my wonderful extended family.

My wife, Kiki, and daughters, Anne and Charlotte, are here with me today. My oldest daughter, Clara, is watching from California. I'm enormously proud of my children, and I owe a debt of gratitude to Kiki that can never be repaid for all the sacrifices she has made on my behalf.

In addition to my family, I'm fortunate to have had numerous mentors, and I want to thank two in particular, Hon. Leonie M. Brinkema, for whom I clerked, and the late Frank Donner, my law partner and the first Federal defender in this district. I'm eternally grateful for all they taught me about integrity and justice.

Thanks to my many colleagues and opposing counsel, all of whom I consider friends, especially my courthouse family who've been so supportive of me throughout this process.

Finally I want to acknowledge the extraordinary work of my chamber staff, Gul Gharbieh and Brittany Hacker. They've both provided me with invaluable assistance.

It is a tremendous honor to have been nominated, and if confirmed it will be a privilege to continue my public service as United States district judge.

Thank you, and I look forward to answering your questions.

Chair BLUMENTHAL. Thanks very much. Ms. Nagala.

STATEMENT OF SARALA VIDYA NAGALA,
NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Ms. NAGALA. Good morning. I'd like to thank Senator Durbin, and Ranking Member Grassley, and all the Senators on this Committee for allowing me to appear today.

I'm also deeply appreciative to President Biden for the great honor of this nomination, and to Senators Blumenthal and Murphy and their staff members for their support in this process and for the kind introductions today.

I'm here today with my parents, Drs. Rup and Vani Nagala, who have been my greatest role models. They have truly lived the American Dream. They immigrated to the United States from India and have lived in North Dakota, where my three siblings and I were born and raised, for more than 40 years. They dedicated their lives to providing medical care to rural North Dakotans, and they taught me the importance of public service. Every opportunity that

I have been given in my life was set in motion by my parents' hard work, sacrifice, and love.

I'm also grateful to my sister, Sonia, who is here today, and to my brothers, Jay and Vik, who are watching from home. I'm lucky to be their sister.

I also have with me today my brilliant husband and true partner, Alexander Rosas, who has been an unending source of love, support, and friendship since we met on the first day of law school so many years ago. Alexander is an amazing dad to our two young boys, Andrew, who is 3, and Annand, who is 2. We are grateful to my parents-in-law, Alan and Christina Rosas, for their support and for traveling from Michigan to Connecticut to watch the boys while we are here today.

I'm also grateful for the support of my siblings-in-law, Wayne, Susan, Kyle, and Anna.

Finally, I would like to thank my family, friends, colleagues, and defense counsel watching around the world and around the country, with special gratitude to my many mentors, including Judge Susan Graber, for whom I clerked and whose passion for the law is unbridled, and to my wonderful colleagues at the United States Attorney's Office in Connecticut, who serve the United States with honor every single day.

I look forward to answering your questions. Thank you.

Chair BLUMENTHAL. Thanks so much. Judge Williams.

STATEMENT OF OMAR ANTONIO WILLIAMS, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Judge WILLIAMS. Thank you, Senator Blumenthal for chairing today's meeting and for your incredibly kind remarks. Chairman Durbin, Ranking Member Grassley, and esteemed Members of this distinguished Committee. Thank you all for having me here today.

Thank you to President Biden for this humbling nomination, and to Senators Blumenthal and Murphy for supporting my application. I'm here because of them, and because of my mother, Lupita, who grew up in poverty in rural Texas, worked the fields, and lost her parents at an early age. My father, Geraldo, who grew up in Panama, a descendant of those who built the canal. His father worked for the government when people of color automatically earned a lower wage. My parents are retired after successful careers in education and in business, and they instilled in my amazing sister, Nadia, and in me, a focus on academics, hard work, faith, and service to others.

My wife, Andrea, was raised similarly. She's a hard-working managing attorney, an invested mother, wife, and daughter. She is the rock of our family, showing loving patience in the pandemic and keeping our spirits up. Throughout this process, she has excelled at work and managed our household so that I could work late. Thank you.

Together we're raising children, Harrison and Grace, who are kind, determined, and resilient. I'm here because of them, because of my coworkers, and because of my mentors who believed in me and who encouraged me to apply.

Justice Lubbie Harper and former Chief Justice Chase Rogers of our State Supreme Court have led me by example and with candor. If I am fortunate enough to be confirmed, I promise you that I will adhere to the law as it's written, and that I will work hard every single day to become worthy of your faith in me.

I thank you very much, and I look forward to your questions.

Chair BLUMENTHAL. Thank you. Mr. Dellinger.

STATEMENT OF HAMPTON Y. DELLINGER, NOMINEE TO SERVE AS ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY

Mr. DELLINGER. Thank you, Senator Blumenthal, Chairman Durbin, Ranking Member Grassley, and Senators of the Judiciary Committee, including my home State Senator from North Carolina, Senator Tillis.

I am honored to appear before you today as President Biden's nominee to be the Assistant Attorney General for the Office of Legal Policy.

And thank you, Senator Coons, for your generous introduction and for being so nice to me when we were young.

I'm thankful to be joined here today by my daughter, Austin Dellinger, and, Chairman Durbin, I want you to know she's about to enter her senior year at the University of Chicago. We expect her to graduate and then be a free agent for a permanent home, so Illinois is very much in the running.

And I appreciate the love and support of family who cannot be present, including my son, Jackson, and a quartet of professors who have taught me so much, and tuition-free.

My amazing wife of almost 27 years, Professor Jolynn Childers Dellinger. My father, Professor Walter Dellinger, who's done so much for the law inside and outside of the classroom. My wonderful, always younger brother, the one with the Ph.D., Dr. Drew Dellinger.

And finally I'd like to remember my mother, Professor Anne Maxwell Dellinger, who passed away recently. She was a blessing to me and always will be my moral compass.

North Carolina is home to so many who have strengthened our country, and I'm grateful that my life has been touched by several of them. After law school I clerked for James Dickson Phillips Jr., who was awarded a Bronze Star and Purple Heart for his heroism in World War II, before going on to his distinguished career as Dean of the UNC Law School and a judge on the U.S. Court of Appeals for the Fourth Circuit.

I was also privileged to know Dr. John Hope Franklin, the celebrated historian whose groundbreaking book, "From Slavery to Freedom: A History of African Americans," helped propel the Civil Rights Movement creating the more just State and Nation I was blessed to grow up in.

If confirmed, I believe my nearly 30-year career as an attorney in the public and private sectors has prepared me to succeed as the head of the Office of Legal Policy.

I will draw upon my experience as North Carolina's deputy attorney general and as chief legal counsel for the Governor's office in addition to my long-time work as a litigator.

Litigators are officers of the court with an ethical duty to know and acknowledge binding law and operative facts. Recognition of the law's boundaries coupled with the rigorous empirical approach to the facts are, in my opinion, prerequisites to developing sound legal policies.

Necessary, too, is an inclusive approach that seeks common ground and consensus. Beyond serving as a primary policy advisor to DOJ leadership, OLP coordinates rulemaking for the Department and assists with the vetting of potential judicial nominees. I am committed to focusing on the facts and adhering to the rule of law across the Office's entire portfolio.

I believe the wide range of clients and viewpoints I have represented, as well as the strong working relationship I have had with elected, appointed, and nonpartisan career officials, will serve me well as I undertake to solicit and synthesize the views of diverse stakeholders.

I am humbled to have been nominated to lead the Office of Legal Policy, and if confirmed it will be a privilege to join a department of such dedicated, talented public servants who so expertly and consistently carry out its mission of ensuring the fair and impartial administration of justice for all Americans.

I look forward to answering the Committee's questions.

Chair BLUMENTHAL. Thanks very much, Mr. Dellinger. I'm so glad you mentioned your folks. I'm a big fan and admirer of them and proud to count myself as a friend of your dad's.

Today has very much a personal feeling for me. It feels very personal. Your stories are so striking and moving. Your families really have lived the American Dream, as Ms. Nagala said about hers. And I think you represent the best of America. You will be the voice and face of justice on the bench, having litigated in district courts as well as appellate courts in the country.

I know, as you do, that very often you will be the end point for people who seek justice and fairness. A lot of folks simply can't go to the next level or don't feel that the strength of their case warrants it. But you will be that face and voice of justice, and so, in my view, nothing the U.S. Senate does is more important than our advice and consent on our future judges.

So, I would like to ask each of you whether you feel that you can put aside whatever the pressures and other kinds of intrusions of the day are, and there are many, because each of you has family that are supportive, and put aside your past experiences and views, your political perspectives, to focus on the person or the group in front of you seeking justice.

And I'll begin with you, Ms. Giles.

Ms. GILES. Thank you for that question, Senator. I agree with you. I think that judges have the largest role in our judicial system because they have the most impact on the fair administration of justice, and whether or not parties perceive whether or not they have received justice. When judges approach the case, they need to approach them with an open mind, unbiased, unswayed by any personal opinions and belief. Your litigants are demanding that. They're expecting that. They are owed that. And if I am honored to be confirmed, I will do that.

Chair BLUMENTHAL. Mr. Nachmanoff.

Judge NACHMANOFF. Thank you, Senator. For the past 6 years serving as a magistrate judge, I've tried my best to impartially and fairly give everyone a chance to be heard, to look at the facts on the record, and to apply the law fairly and evenly. And although my experience in private practice and as a Federal defender has helped me and prepared me to become a judge, my past is of no moment in addressing each of the cases that I have. Those cases are decided solely on the circumstances and the facts before me, and what I've really learned in those 6 years is that every case is the most important case to the litigants before me, whether it is a speeding ticket on the GW Parkway or a multi-million-dollar patent case. For those individuals, that is their most important day in court, and I've tried to be respectful and do my job to the best of my ability, and faithfully apply the law.

Chair BLUMENTHAL. Thank you. And I apologize. I should've addressed you as Judge Nachmanoff.

Judge NACHMANOFF. Thank you. No need to apologize.

Chair BLUMENTHAL. Ms. Nagala.

Ms. NAGALA. Senator, for the better part of a decade, I've had the wonderful privilege of representing the United States in Federal court as an assistant U.S. attorney, but I truly take to heart that the role of an advocate is different from that of the role of the judge.

As a judge—as a prosecutor, I've had the opportunity to appear before a number of judges in our district who are faithful to the rule of law, who treat all the people who appear before them with dignity and respect, and I would be very honored to join in that tradition if I'm fortunate enough to be confirmed.

Chair BLUMENTHAL. Judge Williams.

Judge WILLIAMS. Thank you, Senator Blumenthal. I've also had the great fortune of having been able to show my ability to do this from the bench in State court over the past 7 years, and frankly it's been quite liberating in some ways. As an advocate you know the stakes of being unsuccessful in court as to your client, and you know the times that you might not have done what you're asking a judge to do, although legal. As a judge you're able to focus on the rule of law and the facts of circumstances in front of you and do what you believe is right. I'm certainly able to do that.

Thank you, Senator.

Chair BLUMENTHAL. Thanks. I have a separate question, Mr. Dellinger, for you. I think that—that one of the challenges facing Attorney General Garland and his team has been to restore the credibility and luster, and I do view it as a tradition of great professional luster of our Department of Justice. Having served as U.S. attorney, I think its credibility and independence are important beyond almost any other quality. And I think that he and his team have begun that effort very, very diligently and well.

How do you see your role as providing support for that effort?

Mr. DELLINGER. Thank you, Senator Blumenthal. And I agree in your assessment of the current leadership of the Justice Department. I have the highest regard for General Garland, for the Deputy Attorney General, Lisa Monaco, and for the Associate Attorney General, and for the institution itself. I was taught constitutional law by Burke Marshall at the Yale Law School, who served as head

of the Civil Rights Division during the Kennedy administration in the Justice Department, and I thought of him as a hero. Both my parents have had the pleasure of serving within the Justice Department, my mom with the FBI.

I think the—it is fundamental that the Justice Department be independent and that integrity be at the forefront of everything that is done. It is—there are tens of thousands of career employees, personnel at the Justice Department, day in and day out, who are incredibly dedicated, who are incredibly talented, and it would be an honor to work with them. General Garland has made clear that there will be no politics, no partisanship at the Justice Department. I completely support that. I have had that experience at the State level working in a law enforcement organization, the North Carolina attorney general's office. You have to follow the law. You have to acknowledge the facts. You have to be able to work with nonpartisan personnel, with members of both parties, as I did as a deputy attorney general working with U.S. Attorneys in the Bush administration, in the Clinton administration, and so I'm very comfortable with the mandate that General Garland has set down.

I hope to have the opportunity to serve with him.

Chair BLUMENTHAL. Thank you. Thank you all for your answers. I turn to the Ranking Member, Senator Grassley.

Senator GRASSLEY. Thank you. Just to explain why I wasn't here to hear your testimony is because I was down the hall to Finance Committee asking questions, so I'm going to start with Judge—Ms. Giles. You know the Eastern District well, working for Judge Lee and being a seasoned litigator there, so I want to congratulate you on your nomination. I am interested in understanding the approach that you would take to reading the law as a district judge, especially in the areas of statutory rights and constitutional rights. Would you please explain for us what judicial philosophy would guide you in deciding statutory or constitutional issues?

Ms. GILES. Yes. Thank you for that question, Senator.

When—I've never been a judicial officer, so I don't approach the bench with a set philosophy. I will say that my belief about the role that a judge should serve is created by my experience as a litigator, both as a criminal litigator and a civil litigator. And I believe that judges should approach the interpretation of the law in a fair and unbiased manner, not approaching it with an end result in mind or with any type of bias, but simply to research the binding Supreme Court and fourth circuit precedent for my case or in my situation, and then just fairly applying the law to the facts.

Senator GRASSLEY. Thank you. To Ms. Nagala, prior to becoming assistant U.S. attorney you were an associate at a law firm where you helped write an amicus brief that advocated for the removal of handguns from American homes in the community in 2010. So, I have two questions in regard to that. Do you believe that the Second Amendment protects the rights of Americans to own and keep handguns in their house?

Ms. NAGALA. Yes, Senator. That is the holding of the Supreme Court in *Heller*.

Senator GRASSLEY. Okay. Do you stand by the view set forth in the amicus briefs today?

Ms. NAGALA. Senator, that brief was written in my very few weeks as a junior associate at the law firm. The firm had already brought on the clients and the position that the clients wanted to take in the amicus brief. I would follow the law of the Supreme Court in *Heller* and *McDonald* if I were lucky enough to be confirmed for this position.

Senator GRASSLEY. To Mr.—Judge Nachmanoff, in your Senate Judiciary questionnaire, you briefly mentioned that you spent a period of time serving as a crimes and misdemeanor prosecutor for Herndon, Virginia, so two questions in regard to that. Could you tell us a little more about your time as prosecutor? And B, how do you think your experience as both a prosecutor and a public defender has affected your role as a judge?

Judge NACHMANOFF. Thank you for that question, Senator Grassley. I would be delighted to address that.

One of the clients of my law firm when I was in private practice for 6 years was the town of Herndon. And in Virginia, towns and municipalities can contract out their prosecutorial functions for misdemeanors, and so I, along with my partner, would regularly go to the town of Herndon and prosecute the misdemeanor dockets. It was a wonderful opportunity, and I valued it greatly.

I had served as a paralegal in the Department of Justice before law school, and so I found prosecution work rewarding. It also informed my work as a defense attorney in private practice and as a public defender. I'm a great believer that some of the best defense attorneys have been prosecutors. And some of the best prosecutors have had the experience of representing individual clients as criminal defense attorneys.

All of those experiences contributed to the work that I've done for the past 6 years as a magistrate judge in helping me understand the lawyers who come before me and the challenges they face both on the prosecution side and on the defense side.

Senator GRASSLEY. Okay. My last question will have to be also, you have extensively advocated for the repeal of mandatory minimums during your career as a Federal public defender. If confirmed, you will be responsible for imposing mandatory minimums if the crime fits the criteria. Are you capable of imposing such sentences given your strong advocacy against mandatory minimums?

Judge NACHMANOFF. Thank you, Senator. Yes, absolutely. I will be able to impose mandatory minimums where appropriate, and, in fact, over the past 6 years, some of my responsibilities have included the imposition of sentences that include mandatory minimums. Magistrate judges cannot sentence in felony cases, but misdemeanor cases that are assimilate State law often have mandatory minimums, and I have imposed those sentences consistent with the law, and if fortunate enough to be confirmed, I would certainly do so and follow the law as a district judge.

Senator GRASSLEY. Thank you all for your answers. I yield.

Senator WHITEHOUSE [presiding]. Senator Blumenthal had to step out for a minute and has informed us that Senator Durbin is next, followed by Senator Kennedy. He will be back shortly.

Chair DURBIN. Thanks, Senator Whitehouse. Ms. Giles, how old is Pierce Giles? You've got to turn your mic on.

Ms. GILES. Sorry about that. He's 12.

Chair DURBIN. He looks a lot older with that suit and tie on. I've really noticed how proud he was of his mom.

Ms. GILES. Thank you.

Chair DURBIN. And your mom. What a story.

Ms. GILES. Yes.

Chair DURBIN. I'm glad she's here today to see this moment in your life. I'm sure it means a lot to her. It certainly does to us.

You are quite a litigator. Many people who've called themselves trial attorneys never get close to a trial. You've amassed significant trial experience. Twenty-two cases of verdict and chief counsel in 17 of those cases. That doesn't hurt when you're seeking a district court judgeship that may put you into trial courtroom with regularity. So have you worked primarily on the criminal side?

Ms. GILES. I—the last 18 years have been on the criminal side. Prior to that I spent 2½ years at a large law firm doing general commercial litigation, and prior to that I spent 2 years clerking on the District Court in the Eastern District of Virginia.

Chair DURBIN. Great background. Judge Nachmanoff, did I pronounce your name correctly?

Judge NACHMANOFF. Yes.

Chair DURBIN. Great. Federal Public Defender for the Eastern District of Virginia, you're responsible for supervising the office's general strategy of challenging sentencing disparities between crack and powder cocaine. And in the 2007 Supreme Court case *Kimbrough v. the United States*, you successfully argued that a district judge had the discretion to impose a lower sentence than one recommended by the sentencing guidelines for a crack cocaine offence.

We have been active in this Committee on the issue of sentencing, hoping that we can undo some of the harm for some earlier decisions by Congress. Senator Grassley had to step away again, but he and I worked with Senator Whitehouse, Senator Cornyn, and others to bring the First Step Act to President Trump for his signature.

I'd like to ask you, based on your experience, how the crack powder sentencing disparity impacted your work as a Federal public defender?

Judge NACHMANOFF. Thank you, Chairman Durbin. I had the privilege of arguing the *Kimbrough* case about the 100:1 crack powder disparity in the Supreme Court, and following that decision, of course, the Sentencing Commission retroactively lowered sentences for some defendants who had been already sentenced for crack cocaine. And then, of course, this body and through your leadership, the Fair Sentencing Act was passed, and then the First Step Act was passed. As Federal defender, we handled hundreds of those cases involving retroactivity and sought to seek lower sentences for defendants who had been sentenced very harshly. And as a result, many of those individuals were released a little bit earlier than they otherwise would've been.

In my role, of course, as a magistrate judge, I have played a different role and not been involved in that issue.

Chair DURBIN. It's interesting. The law that created this disparity was bipartisan. Passed Congress. Many of us voted for it to our regret today, but did. And when it came to changing it, that

also was bipartisan, left, right, and center. Democrat, Republican. Business and other interests came together with the understanding that we had not done the job properly and a lot of lives were compromised.

I thank you for your leadership on this issue.

Judge NACHMANOFF. Thank you.

Chair DURBIN. Ms. Nagala, you received an award for a case involving a Romanian. It sounds like it was a complicated case. Could you tell us a bit about it?

Ms. NAGALA. Certainly, Senator. Thank you for that question.

The case involved the extradition of a number of Romanian citizens who were responsible for sending emails to average people, essentially asking them to click on a link and input their banking information. These are typically known as phishing emails. Many of us probably have seen them and hopefully not fallen victim to them, but from afar these individuals were engaged in sending those emails, collecting the bank information, and then victimizing a number of people in Connecticut and throughout the United States.

Chair DURBIN. And you had them extradited to the United States?

Ms. NAGALA. That's correct, Senator Durbin.

Chair DURBIN. And an 80-month sentence?

Ms. NAGALA. Correct, Senator.

Chair DURBIN. So, and received an award for your effort along I'm sure with your team. So I just want to note that for the record.

I thank the other two nominees. I'm sorry that I've run out of time but thank you. I say to you, Judge Williams, that you've been found "well qualified" by the American Bar Association, and I know you'll be an addition to the Federal bench.

Mr. Dellinger, great family tradition continues. Thank you.

Senator WHITEHOUSE. With my apology to Senator Kennedy from misstating the order, we recognize Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Congratulations to all the nominees. Thanks for being here.

Mr. Dellinger, I'd like to start with you if I could. The Office that you're being nominated for, Office of Legal Policy, is a very important one obviously at the Department of Justice, one with a long and proud tradition. It will play an important role in the vetting and nomination of judicial nominees, or at least it has traditionally, so I want to ask you some questions about the Court.

Starting with the current member of the Court about whom you've had relatively a lot to say, some of what you said frankly surprises me, and I want to give you an opportunity to clarify the record here.

I'm talking about Justice Clarence Thomas. When you were in law school, you wrote an attack on Justice Thomas, saying that before he even took his seat on the U.S. Supreme Court, he was illegitimate. You said using the word justice with regard to Clarence Thomas was an oxymoron and that his decisions would never have any legitimacy. That's quite a series of charges to make against a man like Justice Thomas, who's now stood on the Court for quite a length of time. He's faced quite a lot in his life, I think. His life story is well-known. His unique position on the Court is well-

known. So let me just give you an opportunity here to address these very serious accusations. Do you regard Justice Thomas as an illegitimate member of the U.S. Supreme Court?

Mr. DELLINGER. I do not, Senator Hawley.

Senator HAWLEY. Do you regard his opinions as illegitimate?

Mr. DELLINGER. I do not.

Senator HAWLEY. Would you want to clarify your views now and what has changed since you wrote—authored those attacks on Justice Thomas?

Mr. DELLINGER. Well, thank you, Senator Hawley. We share the same law school, and I wrote those comments in law school, approximately 30 years ago, at a time of a contentious and momentous nomination and confirmation hearing. A lot of time has passed. I certainly acknowledged immediately the outcome of that. Justice Thomas was granted a lifetime appointment. I recognize his service on the Court. I recognize the historic nature of his service on the Court as the second African-American Justice. I recognize that he has been an important figure in the law, and I have the highest regard for the U.S. Supreme Court, for the justices who are confirmed to lifetime appointments, and I've recognized that throughout his time on the Court.

Senator HAWLEY. Good. So, in other words, it sounds like to me, what I hear you saying is that you would retract these comments and regret that you made them those years ago?

Mr. DELLINGER. Right. I can't turn back time, and again, those comments were made 30 years ago when I was a student. They do not reflect my recognition of his service on the Court and the importance of his service on the Court.

Senator HAWLEY. Good. Very good. Let me ask you about some other comments you've made about various Supreme Court cases. You've been a pretty fierce critic of the Supreme Court's cases, recent cases, regarding election integrity. You said that conservatives on the Supreme Court are a major barrier to your view of what ought to happen with election rules in this country. You've criticized the *Crawford* case, which was written by Justice Stevens by the way, not a notable conservative. The *Rucho* case, *RNC v. DNC*, the *McCutcheon* case, *Citizens United*, the *McDonald* case, the *Kelly* case. Given your stance on these, I assume you're probably also a critic of the recent *Brnovich* case. Am I to take from this that you will be an advocate for appointing judges and Justices who will seek to overturn these decisions?

Mr. DELLINGER. No, Senator. The decision on who to nominate lies exclusively with the President. The Office of Legal Policy plays an important role but a limited role. And it's similar to a role I played in North Carolina as the Governor's chief legal counsel, which is to vet the background and qualifications of potential nominees for the President to be considering.

Senator HAWLEY. Well, if I could just interrupt you there. But you and I both know that that's where the real work is done. I mean the list that gets to the President, right, that's where the real spade work is done, so what I'm asking—you're going to play a very—if you're confirmed, you'll play a very important role in this process. You've been very outspoken and very critical about all of these cases and even very fiercely critical of those on the Repub-

lican side of the aisle who have fought for election integrity and of the U.S. Supreme Court. So let's come back to this again.

Will you be an advocate for appointing judges and Justices who will seek to overturn these decisions, the *McCutcheon* case, *Citizens United*, the *McDonald* case, the *Crawford* case?

Mr. DELLINGER. Senator, I recognize all of those cases as the law of the land. And I will say, Senator, that I do think in the area of public corruption that——

Senator HAWLEY. But do—I'm sorry to interrupt you. We have a really short time, and my time's almost over. What I'm asking, I think, is do you advocate that they be overturned? I understand you recognize them as law of the land. Of course they are. They're controlling precedent. The Supreme Court can revise its own precedent as we know.

So, will you, you're going to have an important advisory role. Will you advocate for judges and Justices who will seek to limit and overturn these cases that you've criticized so fiercely?

Mr. DELLINGER. Senator, I will not be an advocate in the role that I hope to be confirmed for.

Senator HAWLEY. My time has expired. I'll have some more questions for you for the record. Thank you, Mr. Dellinger.

Thank you, Mr. Chairman.

Mr. DELLINGER. Thank you, Senator.

Senator WHITEHOUSE. Welcome to all of you. I have two questions for the judicial candidates, and the first has to do with civil juries. From the acts of our revolution to the words of Blackstone, which in that era were so important to our nascent legal community, civil juries were central to our founding. And yet, we seem to see from the Supreme Court a pronounced effort to impede access to civil juries that may go back to Blackstone's comment about civil juries that they're a check on the wealthy and the powerful. And those of us who work in this legislative space understand that the wealthy and powerful have privileged fast lanes to get what they want done in Congress, and they can apply political pressure to presidents and administrations, but when they come before a court, when they are in a courtroom, the hard square corners of the jury box demand that everyone be treated alike, and some folks don't like that.

So, I want your assurance that you will bring some understanding of the role of the civil jury in our constitutional structure to your job as a judge that will be supervising civil juries, with any luck. Right across the way, starting with Ms. Giles.

Ms. GILES. Thank you for that question, Senator. I agree with you that juries are essential to our legal system, and in my role as a judge, it would be to ensure that our juries reflect a cross section of our community and that when they serve that they're going to be fair and unbiased, and during—conducting voir dire, it's my job to make sure that that jury is fair and unbiased.

Senator WHITEHOUSE. Judge Nachmanoff.

Judge NACHMANOFF. Thank you, Senator. I agree. Juries are essential to our civil and criminal justice system. One of the things I tell new citizens when I'm privileged to be able to swear in new citizens is that one of their rights and responsibilities is to be able to sit on juries, and so I'm a great believer in the value, both for

the jurors and for the system and those who are the beneficiaries of it, that we have jury trials.

Senator WHITEHOUSE. Ms. Nagala.

Ms. NAGALA. Senator, I agree with Ms. Giles and Judge Nachmanoff that juries in civil and criminal cases are an essential feature of our constitutional system.

Senator WHITEHOUSE. Judge Williams.

Judge WILLIAMS. Thank you, Senator. This is certainly a unique aspect of our legal system throughout the world, and it's one that incredibly important. I do recognize its importance. Thank you, Senator.

Senator WHITEHOUSE. The other question that I wanted to ask, I had a telling conversation with a member of our circuit courts of appeal who described with some woe his sense that he had colleagues who, in their decisions, were dedicating their efforts to auditioning for advancement. In my view when a judge has parties before them in a case, the judge has a solemn duty to the parties before them to bring them justice and to follow the law and not to be auditioning for third parties outside of the courtroom with a view to political advancement.

Could you offer me your views on auditioning as a proper role of a Federal judge?

Ms. GILES. I could not agree with you more, Senator. The role of the judge is to decide the case and controversy before the judge and not to—the judge should never be thinking of any other issue or reason for deciding a case.

Senator WHITEHOUSE. Judge Nachmanoff.

Judge NACHMANOFF. I could not agree more with Ms. Giles.

Senator WHITEHOUSE. Ms. Nagala.

Ms. NAGALA. Likewise, Senator. They said it well.

Senator WHITEHOUSE. And Judge Williams.

Judge WILLIAMS. Agreed, Senator. I'm fortunate enough to be serving in a State where we're subject to reappointment every 8 years, but my decisions are based on the fact and circumstances in front of me in every case. Thank you.

Senator WHITEHOUSE. Thank you. And I think the next in our order is now Senator Kennedy, who I misled earlier about his spot in the order. So my apologies. Senator Kennedy is recognized.

Senator KENNEDY. Thank you, Mr. Chairman. Ms. Giles, your son's name is Pierce?

Ms. GILES. Yes, Senator. And thank you for that kindness you shown him.

Senator KENNEDY. Well, I'm happy to. Is this Pierce right behind you here?

Ms. GILES. Yes, it is.

Senator KENNEDY. Mr. Pierce, you have anything you want to add to this?

[Laughter.]

Senator KENNEDY. How about vote for your mom?

[Laughter.]

Ms. GILES. Yes.

Senator KENNEDY. Mr. Dellinger, I'm not going to ask you about what happened in law school, and I was glad to hear you talking about being nonpartisan. You must have had an epiphany. Want

to read you a tweet. It's from 2019. You weren't in law school then, were you?

Mr. DELLINGER. I was not, Senator.

Senator KENNEDY. How old were you then?

Mr. DELLINGER. I was—I had passed over half a century.

Senator KENNEDY. This is what the tweet says, "Yes, there are some women GOPers," meaning members of the Republican Party, "and a tiny number of Democrats who want Government not women to control women's bodies. But if there were no Republican men in elected office there would be no abortion bans." Did you write that?

Mr. DELLINGER. Senator, I do not recall that specific tweet, but I do not deny writing it.

Senator KENNEDY. You wrote it.

Mr. DELLINGER. Okay.

Senator KENNEDY. There it is. Bigger than Dallas. Do you think that my votes with respect to abortion are based on the fact that I want to control women?

Mr. DELLINGER. Senator, I cannot speak to that.

Senator KENNEDY. Well, why did you say it? In front of God and country.

Mr. DELLINGER. Well, Senator I do believe that the reproductive rights established in *Roe v. Wade* and then dealt with in *Casey*, *June Medical*, and other Supreme Court decisions are important.

Senator KENNEDY. And that's fine. I agree with that. Reasonable people disagree, but that's not what you said, Counselor.

Mr. DELLINGER. Right. And Senator——

Senator KENNEDY. You said every Republican, other than the ones that you like, have their position on abortion because they're misogynistic.

Mr. DELLINGER. Well, Senator, I——

Senator KENNEDY. Do you believe in God?

Mr. DELLINGER. Senator, I have faith. I believe. I certainly——

Senator KENNEDY. A lot of people have faith.

Mr. DELLINGER. Right.

Senator KENNEDY. Did it ever occur to you that some people may base their position on abortion on their faith?

Mr. DELLINGER. Senator, I sincerely appreciate people have a different position on abortion than I——

Senator KENNEDY. You sure don't tweet it. Have you ever tweeted that?

Mr. DELLINGER. Well, Senator, I'm saying it now under oath, and I do——

Senator KENNEDY. Yes. You're up to be nominated. You want me to vote for you.

Mr. DELLINGER. Well, Senator, I am determined to tell the truth, and if I could make clear, Senator—and I appreciate your question and your concern. But Senator, I recognize the difference between someone saying something, you know, inartfully as a private citizen and working as a lawyer, and I think I've got a 30-year track record of being open——

Senator KENNEDY. Okay. I get all that.

Mr. DELLINGER. And just to——

Senator KENNEDY. I've got to move on. We don't have much time, Counselor. Jeez. Do you believe the Justice Department is systemically racist?

Mr. DELLINGER. Senator, I believe every institution in our country exists on a history——

Senator KENNEDY. Yes, but do you believe the Justice Department is systemically racist?

Mr. DELLINGER. Senator, if I could, I believe every institution in our country has dealt with racism and sexism and xenophobia.

Senator KENNEDY. I know, but today? I agree with that, but I'm just asking a simple question. Today, do you believe the Justice Department is systemically racist?

Mr. DELLINGER. I do not believe that the Justice Department——

Senator KENNEDY. Okay. What about the law firm of Hampton Dellinger? It's your law firm. Is it systemically racist?

Mr. DELLINGER. Senator, I have done my best to try——

Senator KENNEDY. Simple question. Do you believe it's systemically racist?

Mr. DELLINGER. Right. And I'm trying to answer it, sir.

Senator KENNEDY. I know. I think you're trying to dodge it, but you go ahead.

Mr. DELLINGER. Well, sir, I certainly do not try to practice systemic racism. I do recognize——

Senator KENNEDY. Neither do I. But is your law firm systemically racist?

Mr. DELLINGER. It is not.

Senator KENNEDY. How about your former law firm, Boies Schiller? Are they systemically racist? You got a bunch of racists there?

Mr. DELLINGER. Certainly they have tried to deal with implicit bias, to recognize it, and to remove any barriers——

Senator KENNEDY. Are they systemically racist?

Mr. DELLINGER. I have no reason to think that they are.

Senator KENNEDY. All right. I'm out of time. Man, that's not just one tweet, Counselor. You got a whole bunch of them here. As long as King Kong's arm.

Chair BLUMENTHAL [presiding]. Senator Klobuchar.

Senator KLOBUCHAR. Just getting over King Kong's arm.

[Laughter.]

Senator KLOBUCHAR. So, Mr. Dellinger, I just want to start by saying what I need to know about you is that you are a friend of Chris Coons, who we all respect very much on this Committee, and I think you went to school with him, is that right?

Mr. DELLINGER. I did. He was a year older than me, and he was very nice to me when he didn't have to be.

Senator KLOBUCHAR. Okay. Excellent. You and I talked on the phone about antitrust. Do you want to talk about that? There's a lot of people on this Committee that care a lot about that, and we have finally gotten a name of someone to head up the Antitrust Division over at the Justice Department, which will be before us soon. And we need to get started on these cases. Could you talk about your past experience with that, even though you wouldn't be overseeing that Division?

Mr. DELLINGER. Yes, Senator Klobuchar, and thank you for the question, and thank you for the opportunity to speak with you be-

fore. I think antitrust is a critical area for American law and for the American economy and for the American people. One of the first cases I did in the North Carolina Attorney General's Office was the suit against *Microsoft*, in the 1990s, when it was gaining a large amount of control and concentration over the internet, joining with your State of Minnesota in that effort. And I think at the end of the day—and we've also seen Senator Tillis, the consolidation in the agricultural industry. And I've very much been focused on small farmers in North Carolina, tobacco farmers, hog farmers, that's something that Senator Grassley and I talked about. And so that concentration in large sectors of the economy has to be a concern, and I very much am glad it's a concern, Senator, for you and for the Congress and the President. We want innovation. And we don't want to impede innovation. We want companies to be successful, but it cannot be at the expense of consumers and of small business. And so while I would not be in litigation—not have a litigation function if confirmed, I think from a policy perspective, assisting the Attorney General, the administration, and if appropriate, the Congress, in dealing with concentration in sectors that may be limiting innovation and harming consumers would very much be a focal point of mine.

Senator KLOBUCHAR. Very good. Thank you. Mr. Nachmanoff, prior to your selection to serve as a Federal magistrate judge, right, you served in the Office of Federal Public Defender. You represented hundreds of clients in criminal proceedings. I guess my first question would more pertain to your magistrate time. Do you think experience matters in these jobs?

Judge NACHMANOFF. Thank you, Senator. I do think experience matters. I think experience can come from many different sources. I've been very privileged to serve as a magistrate judge in the court where I've been nominated to serve as a United States district judge. I know that my experience over the last 6 years working with the district judges and working on those cases would be of great benefit to me if I were fortunate enough to be confirmed.

Senator KLOBUCHAR. And how about your experience as a public defender?

Judge NACHMANOFF. Thank you. Likewise, my 26 years now almost of working in the Eastern District of Virginia, starting as a law clerk and then in private practice and then as a Federal defender, has all given me experiences working with clients and working with all facets of the court, from appearing before the judges to working with probation officers and opposing counsel, that I think have aided me in my work was a magistrate judge and would be of great benefit to me if I were fortunate enough to be confirmed.

Senator KLOBUCHAR. Thank you. Ms. Giles, I know that you were a prosecutor, and I actually led the Abolish Human Trafficking Act with Senator Cornyn many years ago before a lot of people were talking about it. And I know that you, as the assistant United States attorney, led a number of prosecutions in human trafficking. Could you talk about your experience with those cases?

Ms. GILES. Yes, thank you, Senator. Those cases are extremely important because the victims in those cases tend to be the most vulnerable in our society, children, women who are either by force,

fraud, or coercion forced into prostitution. And in doing those cases, they were extremely rewarding because you are definitely doing a service to those victims and ensuring that they are not future victims. And those cases definitely have benefited me personally but also in terms of what I've learned just in the process of dealing with victims.

Senator KLOBUCHAR. Thank you, and I'll submit some other questions on the record. But I know that you, Mr. Williams, also—Judge Williams, also worked on the Judicial Opioid Initiative which I thank you for. Thank you.

Chair BLUMENTHAL. Thank you, Senator Klobuchar. Senator Tillis.

Senator TILLIS. Mr. Chair, I'll defer to Senator Cotton. Follow him.

Chair BLUMENTHAL. Senator Cotton.

Senator COTTON. Thank you. So magnanimous of you, Senator Tillis. Appreciate it.

Mr. Dellinger, you stated on December 16th, 2019, that independent groups cannot, quote, "engage in hate speech at federally funded schools without violating Federal civil rights laws." What is hate speech?

Mr. DELLINGER. Well, Senator, I believe hate speech is speech directed at a particular ethnic group or nationality intended to intimidate. We do not, you know, prosecute speech lightly. It never should. Prosecution should be focused on actions, but I do think there are certain instances where speech is directed at a racial or ethnic minority with the intent to intimidate.

Senator COTTON. And you think that violates our Constitution and Federal civil rights laws?

Mr. DELLINGER. Senator, I think it can if it is intended to convey a threat, to suggest——

Senator COTTON. Well, a threat is different from hate speech. So I'm asking for a definition of hate speech.

Mr. DELLINGER. Well——

Senator COTTON. A clear standard that a judge might apply.

Mr. DELLINGER. Senator, I appreciate the difficulty of this area, and it's—in North Carolina we have had a Hate Speech Act. When we see intimidation and threats that appear to be motivated by racial or other——

Senator COTTON. Intimidations and threats are different. That's not hate speech.

Mr. DELLINGER. Well——

Senator COTTON. It can be motivated out of hate, but threats are a clear and different legal standard.

Mr. DELLINGER. What I was going to——

Senator COTTON. I'm trying to figure out—you didn't say "threats and intimidation" on December 16th, 2019. You said "hate speech at federally funded schools without violating Federal civil rights laws." So I presume you have in mind some definition of what hate speech is.

Mr. DELLINGER. Well, Senator, I think I was—I had in mind what has been in statutes, and as I—the statutes I'm most familiar with, usually ethnic intimidation will convey an enhanced or might have an enhanced penalty to it. I think prosecutors have to be very

careful in this area. I completely understand the First Amendment concerns, and I share them, but I do think whether it's the General Assembly in North Carolina or Congress has been willing to say that for certain types of intimidation or threats that seem to be motivated by racial or other impermissible animus there can be an enhanced penalty.

Senator COTTON. Does the Constitution allow the Government to treat any American differently based on his or her skin color?

Mr. DELLINGER. It depends on what is being treated. If it is identified discrimination based on race or gender or sexual orientation, then under the Constitution, under Supreme Court precedents, that, you know, characteristics can be considered in remedying that identified discrimination.

Senator COTTON. A specific institution to remedy specific past discrimination.

Mr. DELLINGER. Well, that has been established before a court and there is going to be a remedial effort to deal with it. That's my understanding, Senator.

Senator COTTON. But in other instances, the Government must, of course, treat all citizens equally irrespective of their race.

Mr. DELLINGER. Well, Senator, you know, that is going to be defined by the Supreme Court. I recognize there are a number of areas where neutrality is—is the best approach. You think about the Texas Top 10 Percent Plan or raising the minimum wage, there are a number of areas where you may be able to address disparate historic treatment in a race-or gender-neutral way.

Senator COTTON. Do you believe—do you agree with Dr. Martin Luther King, Jr. that we should judge people by the content of their character and not the color of their skin?

Mr. DELLINGER. Yes.

Senator COTTON. Let's turn to a couple of Supreme Court decisions. You've voiced your support repeatedly for *Roe v. Wade*. Do you believe that *Roe v. Wade* was correctly decided?

Mr. DELLINGER. I do, Senator.

Senator COTTON. Do you believe that *DC v. Heller* was correctly decided?

Mr. DELLINGER. I certainly—there has been a range of views about that——

Senator COTTON. The first one was very easy. The second one is not so easy.

Mr. DELLINGER. Well, no, what I was going to say applies to both, which is there has been a range of discussion and disputation about both decisions.

Senator COTTON. The *Roe v. Wade* was very easy for you to say correctly decided. Why is *DC v. Heller* not so easy? Probably because you disagree with *Heller*, right?

Mr. DELLINGER. Well, sir, they're both the law of the land. With *Casey*——

Senator COTTON. Oh, I know they're the law——

Mr. DELLINGER. Well, I——

Senator COTTON. You're not up for a judge.

Mr. DELLINGER. Right.

Senator COTTON. Not up for it to be a judge. The Office you're up for literally has policy in its title. I bet I could ask Judge Wil-

liams if he thought *Marbury v. Madison* was correctly decided. He'd probably say, "I can't decide that. I can't say it because I'm going to be a judge." That's why I'm asking you.

Mr. DELLINGER. I could——

Senator COTTON. Literally, policy is in the title. What's the difference between *Roe v. Wade*, quick yes answer; *DC v. Heller*, a hedged answer. Is it because you do not agree with *DC v. Heller*?

Mr. DELLINGER. No. I might have—if I was the Justice of the Supreme Court which I will not be, I might have voted with the minority in that case, but that's not relevant to the position I've been nominated for. You know——

Senator COTTON. Actually, it's very relevant. You're going to be reviewing all these judges. I bet you're going to try to find judges who share your views on *DC v. Heller* and the Second Amendment.

Anyway, my times expired. Senator Tillis was very generous. We've got a vote to go to as well, so I'll yield back.

Chair BLUMENTHAL. Senator Coons.

Senator COONS. Thank you. And thank you to my colleagues. If I might, given the focus a number of my colleagues have provided on Mr. Dellinger and his background and his service, I thought I'd take just a moment and share with some of the other Members of this Committee why I am so enthusiastic about his nomination if I might briefly, and I know I'm delaying my colleague Senator Tillis and Senator Blumenthal. We all need to get to go to the floor for a vote.

But in reviewing what you've done in the decade since we were law students together, I was struck by two, in particular, letters in support of your nomination to lead the Office of Legal Policy, one from a group of faith leaders, one from a group of law enforcement leaders. Two dozen faith leaders who've known you for decades said, "throughout his career, Hampton's advocated for just causes and operated with care and concern for his fellow human beings, displaying the kind of compassion, humility, and integrity we should demand for our public servants." They go on to say the country will benefit greatly from your generosity of spirit, something I think I look forward to seeing on display in your leadership role in the Department of Justice. And a much larger group of law enforcement leaders, dozens of law enforcement leaders, talk about the high level of rigor and seriousness you will bring to the position and that you have demonstrated in their service alongside you that you understand the challenges faced by law enforcement officers and officials and take those concerns into account when developing policy.

Was there anything else you wanted to say, Mr. Dellinger, before I conclude about your experience advising the Governor, about the role you'll have in terms of forming legal policy, and was there anything else you wanted to speak to before I conclude and we all move on to a vote?

Mr. DELLINGER. Well, thank you, Senator Coons, and it doesn't seem like it was that long ago that we were classmates together. I remember I couldn't get a date, and now I've got a 21-year-old youngest child.

I do think it's important for you to know, and for all the Senators to know, that I recognize the role that I've been nominated for. It

is not my think tank. It's the Attorney General's think tank. It's not, you know, my policies. It's the Attorney General's policies, the Justice Department's leadership.

There's also an important rulemaking function that I would take very seriously, and I think that the rigor and detail one needs to try to succeed as a litigator, which is a very rule bound profession, is the type of rigor I would try to bring to the rulemaking function.

And finally, with regard to the judicial nomination process, you know, I was proud of the role I played in North Carolina vetting judges on occasion, trying to bring a potential nominee to the Governor's attention. One of the judges I'm most proudest of is Al Diaz, who had served in the military courts as a judge, a defense attorney, and a prosecutor in the JAG Corps. And he was a first in North Carolina. He was the first Hispanic judge named to the Superior Court, but I also would say to the media, who would never quote this part, he was the best. He was the best qualified judge that I saw in terms of professional qualifications and has had a distinguished career. And so in my overriding focus was on integrity. Does a potential nominee have personal integrity, show integrity in the workplace, but above all show integrity to the rule of law? And that would be absolutely my North Star, which is this potential nominee, does he have the integrity to understand and acknowledge the Constitution, the binding precedents of the Supreme Court? I certainly would, you know, and again, I understand the difference between being a private citizen at times maybe saying things quickly or inartfully, the professionalism one needs as a practicing attorney, and then what's different about being in a law enforcement organization. And it's not just something I can talk about theoretically. I've been in a law enforcement organization as deputy attorney general of North Carolina I recognize you have to have an overriding focus on independence, on being apolitical, being nonpartisan and working with career employees and officials in both parties.

And if fortunate enough to be confirmed, that's exactly what I would do.

Senator COONS. Thank you, Mr. Dellinger. I, for one, believe that Attorney General Garland and our President will be well served by your advice. I look forward to supporting your nomination. Thank you, Mr. Chairman.

Chair BLUMENTHAL. Thanks, Senator Coons. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. I know the vote's coming up, but I think I can outrun you, so I won't be the last person voting. But Mr. Dellinger, thank you for being here.

You know, as I was hearing some of my colleagues talk, I realized that I have a little bit different perspective, mainly because we know so many people, we have so many mutual acquaintances. And I think it's very important for my colleagues to understand that I have heard, from across the political spectrum, support for you. So, I'm not going to get into a lot of details from when you and I met in the office. Thank you for spending the time that you did. I think that you talked about your writings in law school. I think all of those should be discounted, particularly if you come back and say you no longer stand by them. I can think of a million different things that I said back in the day that I would no longer say today.

You and I are going to have to agree to disagree on position on reproductive rights. I've spent—you and I were walking the halls of North Carolina legislative buildings and the Governor's executive offices at the same time. We passed bills that I thought made sense and promoted life. I think the difference is, in my view, it's about the unborn child, and it's the voice of the unborn that motivates me to look at things where we can make sure that families are properly informed and that we can preserve human life every—to the maximum extent.

I do want a commitment from you though, as you're advising the White House on nominations, that you're looking deep into the records of those who are being nominated to make sure that they are people who will uphold the law and interpret the Constitution as written. Do I have your commitment to do that?

Mr. DELLINGER. Yes, Senator. You absolutely do.

Senator TILLIS. I'm just being sensitive to time. I wanted—Mr. Williams, I wanted to tell you I tend to watch where questions are directed, and I think you got the fewest questions. You should consider that a very good sign. And to all the nominees, thank you all.

Mr. Nachmanoff, I just had a real quick question. You know that I've—in North Carolina we did the Justice Reinvestment Act early exit for persons incarcerated. Up here, I've supported efforts to try and make sense out of our criminal justice reform. Are you familiar with any of the things that we've been carrying through this Committee and have an opinion on them?

Judge NACHMANOFF. No, Senator. Thank you for that question. I'm not familiar. In my present job, of course, I'm in a very different role, and so I can't speak to that.

Senator TILLIS. Yes. Well, I think you'd find if you study some of it, I think it's an indication of bipartisan support for making—improving the situation.

You all, I'm going to yield back the rest of my time, but congratulations on your nominations. You should be very proud. I'm sure the folks sitting behind you are very proud, and I wish you the best of luck. Thank you.

Chair BLUMENTHAL. Thank you, Senator Tillis.

Senator TILLIS. And Mr. Dellinger, I will be supporting your nomination.

Mr. DELLINGER. Senator, thank you.

Chair BLUMENTHAL. Thanks, Senator Tillis. We have a vote that is ongoing right now, so in the absence of any objection, I'm going to call the hearing to a close.

The record will remain open for 1 week. Colleagues who want to submit additional questions can do so, and you may be asked to submit answers in writing. So we welcome you here. We wish you good luck. I think you have demonstrated that you have strong support in this Committee, and I look forward personally to supporting every one of you.

Thanks so much. This hearing is adjourned.

[Whereupon, at 12 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

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

   Hampton Yeats Dellinger

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

   Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice

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

   Law Firm of Hampton Dellinger, PLLC
   4306 Peachway Drive
   Durham, NC 27705

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

   April 30, 1967; Oxford, Mississippi

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.

   Yale Law School (1990-1993)
   J.D., May 1993

   University of Michigan at Ann Arbor (1985-1989)
   B.A., May 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.

November 2020 - Present
Law Firm of Hampton Dellinger, PLLC
Founder
4306 Peachway Drive
Durham, NC 27514

April 2013 – November 2020
Boies Schiller & Flexner
Partner (initially Of Counsel)
1401 New York Avenue, NW
Washington, DC 20005

July 2008 – March 2013
Robinson Bradshaw & Hinson
Partner
1450 Raleigh Road
Chapel Hill, NC 27517

January 2008 – June 2008
Candidate for Lt. Governor (NC)
4306 Peachway Drive
Durham, NC 27705

July 2003 – January 2008
Womble Carlyle (now Womble Bond)
Partner
150 Fayetteville Street (now 555 Fayetteville Street)
Raleigh, NC 27601

July 2001 – June 2003
Member, Governor's Advisory Council on Hispanic/Latino Affairs
116 W. Jones Street
Raleigh, NC 27603

January 2001 – June 2003
Legal Counsel, Office of the Governor
116 W. Jones Street
Raleigh, NC 27603

December 1999 – January 2001
Deputy Attorney General, NC Department of Justice
114 W. Edenton Street
Raleigh, NC 27602

September 1999 – January 2001
Duke Law School
Adjunct Professor
210 Science Drive
Durham, NC 27708

October 1998 – December 1999
Smith Helms Mulliss Moore
Counsel
434 Fayetteville Street
Raleigh, NC 27601

September 1996 – October 1998
Special Counsel, NC Department of Justice
114 W. Edenton Street
Raleigh, NC 27602

September 1994 – August 1996
Wilmer, Cutler & Pickering (now Wilmer Hale)
Associate
2445 M Street
Washington, DC 20037

September 1993 – September 1994
Judge J. Dickson Phillips, Jr.
Law Clerk
323 E. Chapel Hill Street
Durham, NC 27701

May 1993 – July 1993 (also December 1992 – January 1993)
Parker Poe Adams & Bernstein
Law Clerk
One Exchange Plaza
Raleigh, NC 27602

July – August 1992
Tharrington, Smith & Hargrove
Law Clerk
209 Fayetteville Street Mall
Raleigh, NC 27602

May – June 1992
Patton Boggs & Blow
Law Clerk
2550 M Street, NW
Washington, DC 20037

September 1991 – May 1993
Yale Law Journal, Editor and Senior Editor
127 Wall Street
New Haven, CT 06511

July – August 1991
Robinson, Bradshaw & Hinson
Law Clerk
1900 Independence Center, 101 N. Tryon Street
Charlotte, NC 28246

May – June 1991
Donovan Leisure
Law Clerk
1250 24th Street, NW
Washington, DC 20037

Yale Law School, Class of '93 Student Representative (1990-91, 1991-92)
127 Wall Street
New Haven, CT 06511

June 1990 – September 1990
Harvey Gantt for US Senate campaign
Research and communications staff
220 Hillsborough Street
Raleigh, NC 27603

October 1989 – June 1990
Mike Easley for US Senate campaign
Press Secretary
616 Wade Avenue
Raleigh, NC 27605

July 1989 – December 1989
Duke Law School
Library Clerk and Book Mover
210 Science Drive
Durham, NC 27708

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

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

   Leader in the Law, North Carolina Lawyers Weekly (2020)

   North Carolina Legal Elite, Business NC Magazine (2012)

   Award of Appreciation, North Carolina State AFL-CIO (2003)

   US Court of Appeals for the 4th Circuit Judicial Conference, Permanent Member

   Yale Law Journal, Editor and Senior Editor (1991-1993)

   John A. Williams History Award, University of Michigan at Ann Arbor (1989)

   University of Michigan – invited to participate in Freshmen Honors Program; graduated with High Honors; Academic Honors 1986, 1987, 1988; James B. Angell Scholar

   Earl Riskey Award, University of Michigan at Ann Arbor, Intramural All-Around Campus Athlete of the Year (1989)

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

   American Bar Association
   North Carolina Bar Association
   U.S. Court of Appeals for the Fourth Circuit Judicial Conference, Permanent Member (since 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.

       North Carolina, 1993
       District of Columbia, 1995

I went to inactive status for my D.C. Bar membership from approximately 1997-2012 while my practice was primarily focused on North Carolina (or multi-state) matters.

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 (1998)
U.S. Court of Appeals for the Fourth Circuit (1994)
U.S. District Court for the District of Columbia (1994)
U.S. District Courts for North Carolina (WDNC, MDNC, EDNC) (2003)
All North Carolina State Courts (1994)

There have been no lapses in membership.

11. **Memberships**:

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

Duke Faculty Club (2000 – Present)

I believe I have paid to attend events sponsored by a number of organizations although I did not necessarily become a group member. In addition, I have participated in worship in Durham, NC at First Presbyterian, Saint Joseph AME, and Eno River Unitarian Universalist Fellowship and have provided donations during their services.

I recall making financial contributions over the years to schools I have attended. I may have made other financial contributions to charitable, religious, or other organizations over the years but do not recall any specific donation and I did not participate in programmatic activities for such organizations.

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

To my knowledge, none of these organizations discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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

N.C. constitution argument to end UNC tuition discrimination, WRAL.COM, Oct. 29, 2020. Copy supplied.

NC GOP once had it right on voting-by-mail and courts today should listen, NC POLICY WATCH, June 3, 2020. Copy supplied.

Discarded UNC plan dooms Silent Sam deal and any proposed campus return, NC POLICY WATCH, Feb. 11, 2020. Copy supplied.

How the U.S. Government is Failing Women's Soccer, POLITICO, June 19, 2019. Copy supplied.

If Silent Sam's fall was illegal, so too was its standing, THE NEWS & OBSERVER, Aug. 8, 2018. Copy supplied.

Symposium: Upending the long-settled law of politics, SCOTUSBLOG, June 27, 2016. Copy supplied.

When Muhammad Ali Took on America, SLATE, June 6, 2016. Copy supplied (excerpts from article previously published in Reconstruction magazine).

The Grass Ceiling: How to Conquer Inequality in Women's Soccer, THE ATLANTIC, July 5, 2015. Copy supplied.

Modernizing the New South: The Legacy of Judge Phillips' Late-Career, Late-Century Rulings in Shaw and VMI, 92 N.C. L. REV. F. 1795 (2014). Copy supplied.

Senior Dunn Scores as Tar Heels Top Bruins, THE NEWS & OBSERVER, Sept. 6, 2013. Copy supplied.

Righting Two Martin Luther King Memorial Wrongs, THE ATLANTIC, Jan. 1, 2013. Copy supplied.

In 2012, I wrote several dispatches from the criminal trial of John Edwards that were posted on NBCNews.com and/or MSNBC.com. I do not have copies of those writings (which, as I recall provided reporting and legal analysis). But I believe they were similar to the views expressed in my essay for Atlantic.com on the Edwards prosecution (see below) and comments I made in response to reporters' questions.

Some Debate Prep Advice for Obama, in the Spirit of Friday Night Lights, THE ATLANTIC, Oct. 15, 2012. Copy supplied.

The Tar Heel Top 5: North Carolina's Most Notable Campaigns, THE ATLANTIC, Sept. 3, 2012. Copy supplied.

How to Give a Convention Speech that Will Get You Re-Elected, THE ATLANTIC, Aug. 24, 2012. Copy supplied.

UNC women's soccer team gets set for NCAA games, NEWS & OBSERVER, Nov. 11, 2012. Copy supplied.

UNC, Duke women's soccer players friends and foes, NEWS & OBSERVER, Oct. 18, 2012. Copy supplied.

Why the John Edwards Trial Is a Bigger Deal Than You Think, THE ATLANTIC, Apr. 11, 2012. Copy supplied.

Closing Arguments Against Amendment One, CHAPELBORO.COM, Apr. 11, 2012. Copy supplied.

U.S. Senator D.G. Martin: What Might Have Been, CHAPELBORO.COM, Jan. 16, 2012. Copy supplied.

From 2011 to 2012, I maintained a blog for ABC11 WTVD, entitled, *The John Edwards Trial Blog*. I recall five posts total, two of which I was able to locate (listed below). The views expressed in these posts were similar to the views expressed in my essay for Atlantic.com on the Edwards prosecution and comments I made in response to reporters' questions.

John Edwards Trial Blog, *The John Edwards – Mike Easley Connections*, ABC11 WTVD NEWS, Jan. 13, 2012. Copy supplied.

John Edwards Trial Blog, *Judge to Hear Motions in Edwards Case Friday*, ABC11 WTDV , Dec. 15, 2011. Copy supplied.

Big Game. Big, Big, Big, Game. CHAPELBORO.COM, Oct. 12, 2011. Copy supplied.

Last in Flight… at First, CHAPELBORO.COM, Sept. 28, 2011. Copy supplied.

Seven Lessons from the Davis Firing, CHAPELBORO.COM, Aug. 1, 2011. Copy supplied.

Dean Smith's Secret for Int'l Success Still Works, CHAPELBORO.COM, June 26, 2011. Copy supplied.

Unpublished Authors Unite! CHAPELBORO.COM, June 2, 2011. Copy supplied.

UNC Greats Heath and O'Reilly, Plus Coach Dorrance, on 2011 Women's World Cup, CHAPELBORO.COM, May 18, 2011. Copy supplied.

CH Case Before US Supreme Court Raises Tough Questions, CHAPELBORO.COM, May 10, 2011. Copy supplied.

Let's Go Beyond Civil War Markers at Town-Gown Border, CHAPELBORO.COM, May 2, 2011. Copy supplied.

Children's Story, *Thanks for Nothing: How Willie and Abe Saved Thanksgiving* (self-published, 2008). Available at www.lulu.com.

Letter to the Editor, *Candidate Disagrees*, WILSON DAILY TIMES, May 6, 2008. Copy supplied.

Letter to the Editor, *Bringing Them Home*, News & Observer, May 5, 2008. Copy supplied.

Why I'm Running for Lieutenant Governor, HAMPTON DELLINGER FOR NORTH CAROLINA LIEUTENANT GOVERNOR (2008). Copy supplied.

Hampton Dellinger and Walter Dalton: Major Differences on Major Issues, HAMPTON DELLINGER FOR NORTH CAROLINA LIEUTENANT GOVERNOR (2008). Copy supplied.

Working for Textiles, NEWS & OBSERVER, Aug. 5, 2003. Copy supplied.

Toeing the Legal Lines, NATIONAL LAW JOURNAL, Dec. 2, 2002. Copy supplied.

A fine pediatrician, NEWS & OBSERVER, Jan. 12, 2000, Jan. 12, 2000. Copy supplied.

Let SBI help police, CHARLOTTE OBSERVER Sept. 4, 1999. Copy supplied.

Risky contributions for business, NEWS & OBSERVER (Feb. 19, 1999). Copy supplied.

Words Are Enough: The Troublesome Use of Photographs, Maps and Other Images in Supreme Court Opinions, 110 HARV. L. REV. 1704 (1997). Copy supplied.

Muhammad Ali: The Boxer as Dissident, RECONSTRUCTION (1994). Copy supplied.

Ban advertising for N.C. lottery, CHARLOTTE OBSERVER, Oct. 10, 1994. Copy supplied.

Blair Levin and Hampton Dellinger, *N.C. needs new weapons in cutthroat war for jobs*, CHARLOTTE OBSERVER, July 11, 1993. Copy supplied.

Ban Cigarette Ads Targeting Kids, YALE DAILY NEWS, Apr. 24, 1992, at 2. Copy supplied.

Pro-Choice: March On to the Voting Booths, YALE DAILY NEWS, Apr. 8, 1992, at 2. Copy supplied.

A Hint of Elvis: Clinton is the Southern Son, YALE DAILY NEWS, Mar. 25, 1992, at 2. Copy supplied.

Law School Students Triumphant on (Basketball) Court, YALE DAILY NEWS, Mar. 3, 1992, at 2. Copy supplied.

Why You Should Never Go to Law School, YALE DAILY NEWS, Feb. 12, 1992, at 2. Copy supplied.

Blame Y Chromosomes for Political Impotence, YALE DAILY NEWS, Jan. 29, 1992, at 2. Copy supplied.

Sen. Jesse Helms Would Flunk English 125, YALE DAILY NEWS, Jan. 14, 1992, at 2. Copy supplied.

David Duke Needs and Art History Lesson, YALE DAILY NEWS, Nov. 20, 1991, at 2. Copy supplied.

Improved Education Should Mean Fun, YALE DAILY NEWS, Nov. 8, 1991, at 2. Copy supplied.

Michael Jordan: Spokesman for Our Time, YALE DAILY NEWS, Oct. 23, 1991, at 2. Copy supplied.

Thomas-Hill Debacle Hits Close to Home, YALE DAILY NEWS, Oct. 23, 1991, at 2. Copy supplied.

Money for Nothing, CONSIDER MAGAZINE, Oct. 3, 1988. Copy supplied.

If JOA fails, read Free Press while you can, MICHIGAN DAILY (Jan. 29, 1988). Copy supplied.

Bush's views and record don't qualify, MICHIGAN DAILY (Dec. 11, 1987). Copy supplied.

No candidates shine in presidential debate, MICHIGAN DAILY (Dec. 3, 1987). Copy supplied.

Students watch as Democrats, Republicans debate issues, MICHIGAN DAILY (Dec. 2, 1987). Copy supplied.

Student arranges senator's 'U' Visit, MICHIGAN DAILY (Oct. 5, 1987). Copy supplied.

Black law prof. stood for justice, MICHIGAN DAILY (Sept. 11, 1987). Copy supplied.

Students end stay in Washington, MICHIGAN DAILY (Aug. 7, 1987). Copy supplied.

Nation's capital follows hearings, MICHIGAN DAILY (July 17, 1987). Copy supplied.

Rep. calls for more taxes, MICHIGAN DAILY (Sept. 14, 1987). Copy supplied.

Poverty in Mexico surprises students, MICHIGAN DAILY (Mar. 2, 1987). Copy supplied.

Antenna picks up Soviet TV, MICHIGAN DAILY (Feb. 17, 1987). Copy supplied.

'U' profs call Soviet reforms ice-breaking, MICHIGAN DAILY (Feb. 4, 1987). Copy supplied.

Award-winning poet keynotes 1987 Hopwoods, MICHIGAN DAILY (Jan. 22, 1987). Copy supplied.

Congressman praises King, MICHIGAN DAILY (Jan. 14, 1987). Copy supplied.

Color of money green for pool hall, MICHIGAN DAILY (Nov. 11, 1986). Copy supplied.

Protestors condemn Reagan at rally, MICHIGAN DAILY (Oct. 16, 1986). Copy supplied.

Commuter buses pose problems, MICHIGAN DAILY (Sept. 12, 1986). Copy supplied.

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

I have done my best to identify any reports, memoranda, or policy statements I have prepared or contributed to, including through a review of my personal files and searches of publicly available electronic databases. I am not aware of any responsive documents.

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

I have done my best to identify any testimony, official statements, or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Outside Counsel's Review and Assessment of Complaints Filed Against Charlotte's Mayor and City Council, Dec. 3, 2020. Copy supplied.

Statement by former North Carolina Deputy Attorney General Hampton Dellinger in Opposition to Anti-Sheriff Legislation, June 25, 2019. Copy supplied.

Letter to UNC System President Margaret Spellings and UNC Chapel Hill Chancellor Carol Folt, *Response to September 18 and 19, 2017, Letters on Silent Sam's Removal*, Sept. 22, 2017. Copy supplied.

Letter to UNC System President Margaret Spellings and UNC Chapel Hill Chancellor Carol Folt, *Stop Violating Federal Civil Rights Laws and Remove Silent Sam*, Sept. 13, 2017. Copy supplied.

Hampton Dellinger on Higher Education, HAMPTON DELLINGER FOR LIEUTENANT GOVERNOR, 2008. Copy supplied.

Statement by Hampton Dellinger, Democratic Candidate for Lt. Governor, in Support of "DIX 306" and "Dorothea 365", HAMPTON DELLINGER FOR LIEUTENANT GOVERNOR, July 2, 2007. Copy supplied.

Dellinger Opposes Navy's Proposed Outlying Landing Field (OLF), HAMPTON DELLINGER FOR LIEUTENANT GOVERNOR, Apr. 17, 2007. Copy supplied.

A Golden Opportunity: Proposals to Assist North Carolina Seniors, HAMPTON DELLINGER FOR LIEUTENANT GOVERNOR, Mar. 2007. Copy supplied.

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

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. I frequently speak without notes or speak from a handwritten outline. I did not retain the majority of the handwritten outlines and have attached all that I could find. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Speaker, *Catawba County Branch NAACP monthly meeting*, Conference Call (Apr. 11, 2021). Press coverage supplied. No transcripts or notes retained.

Panel, *Symbols of the Confederacy and White Supremacy: Removing Monuments to Hate in the Public Square*, NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN STATE COURTS, Nov. 13, 2020. Webcast: https://nationalcenterforstatecourts.app.box.com/s/hmk4nauftxzq36ur4idb1nhqpaajz0et

Speaker, Festival of Legal Learning, *Controversial Public Monuments*, UNC SCHOOL OF LAW, Chapel Hill, N.C. Feb. 7, 2020. Event description supplied. No transcripts or notes retained.

Panelist, Sports & Entertainment Law Society Symposium, *USWNT/Equal Pay Movement*, DUKE LAW SCHOOL, Jan. 17, 2020. Event description supplied. No transcripts or notes retained.

Panelist, *Equal Play, Equal Pay*, WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, Oct. 3, 2019. No transcripts or notes retained.

Panelist, Fordham Sports Law Symposium, *Gender Equity in Sports*, FORDHAM LAW SCHOOL, New York, NY. No transcripts or notes retained.

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Gary Wright, *Easley names Diaz to Superior Court bench; Charlotte lawyer to be 1st Hispanic to serve on N.C. court; Marine reserve officer to face 2002 election for seat vacated by Senate candidate Ray Warren,* CHARLOTTE OBSERVER, Nov. 22, 2001. Copy supplied.

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John Wagner, *Back to a future in AG's office,* RALEIGH NEWS AND OBSERVER, Dec. 31, 1999. Copy supplied.

Wade Rawlins, *Dellinger bows out of attorney general's race, supports state Sen. Cooper,* RALEIGH NEWS AND OBSERVER, Oct. 11, 1999. Copy supplied.

Anna Griffin, *Dellinger defers to Cooper, quits attorney general race,* CHARLOTTE OBSERVER, Oct. 9, 1999. Copy supplied.

Wade Rawlins, *Wicker hires campaign staffers; Hampton Dellinger builds AG war chest,* RALEIGH NEWS AND OBSERVER, Aug. 16, 1999. Copy supplied.

Appeals court says drug tax doesn't place defendants in double jeopardy, THE ASSOCIATED PRESS STATE & LOCAL WIRE, Apr. 7, 1999. Copy supplied.

Jim Morrill, *Ban on corporate campaign gifts voided,* CHARLOTTE OBSERVER, Feb. 18, 1999. Copy supplied.

Dan Chapman et al., *Teen will get an early sense of public service,* CHARLOTTE OBSERVER, Jan. 24, 1999. Copy supplied.

Easley's concerns hold up tobacco bill in Senate, ASSOCIATE PRESS STATE & LOCAL WIRE, Aug. 26, 1998. Copy supplied.

Randall Chase, *Request from hog industry group rejected; Judge rules state's campaign laws being enforced properly,* ASSOCIATED PRESS-DURHAM HERALD-SUN, Jul. 31, 1998. Copy supplied.

Lawsuit seeks repayment of drug tax proceeds; law said unconstitutional, ASSOCIATED PRESS-DURHAM HERALD-SUN, Jul. 26, 1998. Copy supplied.

John Nagy, *Drug tax proceeds threatened; A new lawsuit could force North Carolina to repay $30 million collected by its drug tax,* GREENSBORO NEWS & RECORD, Jul. 25, 1998. Copy supplied.

Doug Campbell, *Workers want a slice of cigarette-deal pie; A North Carolina law prevents the stater from suing the tobacco industry, but; Tobacco workers don't want to be left out of a settlement.* GREENSBORO NEWS & RECORD, Jul. 17, 1998. Copy supplied.

Tobacco lawsuit in N.C.?; Attorney general wants state to get slice of settlement, ASSOCIATED PRESS-DURHAM HERALD-SUN, Jul. 12, 1998. Copy supplied.

Stephanie Gibbs, *Case prompts closer look at sexual-harassment law,* CHARLOTTE OBSERVER, Jun. 12, 1998. Copy supplied.

Paul South, *Schools walk fine line on religious expression; A school sign and other incidents put the issue in the spotlight in Dare County,* THE VIRGINIAN-PILOT, May 17, 1998. Copy supplied.

Jena Heath, *Justices stay Flowers' execution,* RALEIGH NEWS AND OBSERVER, Apr. 24, 1998. Copy supplied.

Estes Thompson, *Leaders ready to redo 12th District; Attorney general requests stay from Supreme Court,* ASSOCIATED PRESS-DURHAM HERALD-SUN, Apr. 7, 1998. Copy supplied.

Norm Alster, *States rally legal forces for year 2000 showdown,* INVESTOR'S BUSINESS DAILY, Mar. 5, 1998. Copy supplied.

Clifton Daniel, *Smokers In Exile; As proof of health risks of using tobacco accumulates and smoking is banned in more public places, smokers are increasingly becoming outcasts,* WILMINGTON SUNDAY STAR-NEWS, Mar. 1, 1998. Copy supplied.

Stephanie Gibbs, *Both parties can play dot cards*, CHARLOTTE OBSERVER, Jan. 11, 1998. Copy supplied.

State leaders seek delay in restricting access to licenses, ASSOCIATED PRESS, Oct. 22, 1997. Copy supplied.

Dennis Patterson, *GOP: Hunt donation charge should be probed,* ASSOCIATED PRESS-DURHAM HERALD SUN, Sep. 26, 1997. Copy supplied.

State to ask that Blue Cross funds become public asset, GREENSBORO NEWS & RECORD, Jul. 8, 1997. Copy supplied.

Dennis Patterson, *State joins suit seeking Blue Cross reserve fund,* ASSOCIATED PRESS-DURHAM HERALD-SUN, Jul. 8, 1997. Copy supplied.

Steve Robblee, *Lawyers find in Triangle's favor,* TRIANGLE BUSINESS JOURNAL, Jun. 23, 1997. Copy supplied.

Stephanie Gibbs, *Uniform N.C. bail policy possible; Killing in Charlotte prompted survey of district magistrates,* CHARLOTTE OBSERVER, May 7, 1997. Copy supplied.

Stephanie Gibbs, *Task force to study N.C. bail system; Murder at Cotswold prompts scrutiny,* CHARLOTTE OBSERVER, Apr. 17, 1997. Copy supplied.

Frank Murray, *Supreme Court bar ritual includes role for mom or dad*, THE WASHINGTON TIMES, Mar. 16, 1997. Copy supplied.

Foon Rhee, *Can nasty, cash-laden elections be cured?; Big-name reformers giving it a try in N.C.* CHARLOTTE OBSERVER, Dec. 10, 1996. Copy supplied.

Ray Gronberg, *Daly's 4 lawsuits appear stalled; Courts can dismiss cases if summons not served by deadline,* CHAPEL HILL HERALD, Dec. 2, 1996. Copy supplied.

Dennis Patterson, *Gantt Wins Democratic Race; First Black Senate Nominee in N.C.,* THE ASSOCIATED PRESS, Jun. 5, 1990. Copy supplied.

Seth Effron, *Vague Dollar Sign Raises Question in Helms Letter*, GREENSBORO NEWS & RECORD, June 3, 1990. Copy supplied.

Gantt, Easley Camps 'Debate' TV Forums, GREENSBORO NEWS & RECORD, May 25, 1990. Copy supplied.

Party Decries Tactics: Democrats Leaders Take Thomas to Task, GREENSBORO NEWS & RECORD, May 6, 1990. Copy supplied.

Easley Takes on Drug War in Television Advertisements, GREENSBORO NEWS & RECORD, Apr. 25, 1990. Copy supplied.

In N.C. Primaries, 40 Percent of the Vote Wins Nomination Election Change Could Improve Chances for Black Candidates, CHARLOTTE OBSERVER, Mar. 21, 1990. Copy supplied.

Seth Effron, *Surprise Entrant Makes Senate Bid*, Greensboro News & Record, Feb. 6, 1990. Copy supplied.

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

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

I was appointed by North Carolina Attorney General Mike Easley to serve as Special Counsel to the Attorney General, 1996-1999 and, later, as a Deputy Attorney General (1999-2001). I was appointed by Governor Mike Easley to serve as Chief Legal Counsel for the Office of the Governor (2001-2003).

In 2000, I considered running for Attorney General, and opened a campaign committee, but opted not to and closed the committee.

In 2008, I unsuccessfully sought the Democratic nomination for Lt. Governor. My intention had been to run for an open seat for Attorney General in 2008 but the incumbent opted to seek another term.

In 2011, I was nominated by members of Durham's Democratic Party to fill a vacancy on the Durham County (NC) Board of Commissioners. The nomination was non-binding and the Board chose to name an interim, placeholder person (i.e. someone who agreed not to seek election to a full term).

In 2020, I considered running for the North Carolina Court of Appeals and opened a campaign committee, but opted not to and closed the committee.

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 am a registered Democrat and have attended certain Democratic party events but have never held a party office.

I volunteered or was paid a modest amount for work I performed for the following campaigns: David Price for Congress, Deputy Press Secretary (1986); Mike Easley for U.S. Senate, Press Secretary (1990); Harvey Gantt for U.S. Senate and/or NC Democratic Party, policy researcher (1990); Mike Easley for Attorney General, policy researcher/media (1992). My primary work for those campaigns related to policy and media relations. I have also assisted as a volunteer with voter education and protection efforts organized by the North Carolina Democratic Party (NCDP) during early vote and on election day over the years. In 2020, I assisted both the NCDP and the Biden – Harris campaign with voter protection and related legal efforts in North Carolina.

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

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

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

I served as a law clerk to the Honorable J. Dickson Phillips, Jr., United States Court of Appeals for the Fourth Circuit (1993-1994).

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

I began a solo practice (Law Firm of Hampton Dellinger, PLLC) in November 2020. I work out of my personal residence. My practice consists of litigation, regulatory matters, and investigations.

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.

April 2013 – November 2020
Boies Schiller & Flexner
Partner (initially Of Counsel)
1401 New York Avenue, NW
Washington, DC 20005 and

July 2008 – March 2013
Robinson Bradshaw & Hinson
Partner
1450 Raleigh Road
Chapel Hill, NC 27517

July 2003 – January 2008
Womble Carlyle (now Womble Bond)
Partner
150 Fayetteville Street
Raleigh, NC 27601

January 2001 – June 2003
Legal Counsel, Office of the Governor
116 W. Jones Street
Raleigh, NC 27603

December 1999 – January 2001
Deputy Attorney General, NC Department of Justice
114 W. Edenton Street
Raleigh, NC 27602

September 1999 – January 2001
Duke Law School
Adjunct Professor
210 Science Drive
Durham, NC 27708

October 1998 – December 1999
Smith Helms Mulliss Moore
Counsel
434 Fayetteville Street
Raleigh, NC 27601

September 1996 – October 1998
Special Counsel, NC Department of Justice
114 W. Edenton Street
Raleigh, NC 27602

September 1994 – August 1996
Wilmer, Cutler & Pickering (now Wilmer Hale)
Associate
2445 M Street (now 1875 Pennsylvania Ave)
Washington, DC 20037

September 1993 – September 1994
Judge J. Dickson Phillips, Jr.
Law Clerk
323 E. Chapel Hill Street
Durham, NC 27701

May 1993 – July 1993 (also December 1992 – January 1993)
Parker Poe Adams & Bernstein
Law Clerk
One Exchange Plaza (now 301 Fayetteville Street)
Raleigh, NC 27602

July – August 1992
Tharrington, Smith & Hargrove
Law Clerk
209 Fayetteville Street Mall
Raleigh, NC 27602

May – June 1992
Patton Boggs & Blow
Law Clerk
2550 M Street, NW
Washington, DC 20037

July – August 1991
Robinson, Bradshaw & Hinson
Law Clerk
1900 Independence Center, 101 N. Tryon Street
Charlotte, NC 28246

May – June 1991
Donovan Leisure
Law Clerk
1250 24th Street, NW
Washington, DC 20037

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.

Since 2020, I have assisted clients as a sole practitioner. For several matters, I have worked with either in-house attorneys or attorneys at other law firms, or both. My practice is focused on potential or on-going litigation in state and federal courts, and on regulatory and administrative matters at the local, state, and federal levels including COVID-19 related legal advising. Along with co-counsel, I have served as an outside investigator looking into complaints against certain elected local officials.

From 2013 – 2020, I worked at a law firm with offices in several United States cities (and London) working principally on civil litigation in federal and state courts including private class actions and matters involving state and federal regulators. I advised certain candidates and elected officials on campaign compliance and election law matters. And I worked on a limited number of matters with a criminal justice or law enforcement component. I also worked on pro bono matters noted in response to Question 23.

From 2003 – 2013, I worked for regional law firms in North Carolina and my practice was focused mainly on civil litigation in North Carolina state and federal courts. I also advised sexual assault survivors and family members on civil and criminal issues related to the assaults.

From 2001 – 2003, I managed the judicial vetting process for the Governor of North Carolina, oversaw the work of the General Counsel for departments and agencies reporting to the Governor, and served as the Office's legal liaison with the North Carolina Attorney General's office, Native American tribes, federal officials (such as United States Attorneys), and foreign consulates in North Carolina.

From 1996-2001 (except for 1999 when I worked for regional law firm in North Carolina), I was a member of the senior management team in the North Carolina Attorney General's office working on major matters in the office including state and federal litigation in North Carolina and multi-state cases involving State AGs from across the nation including the Microsoft antitrust litigation.

From 1994-1996, I worked on state and federal court litigation matters for a law firm based in Washington, DC.

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

As a solo practitioner, my clients have been individuals, companies, and a municipality. Areas I have been involved with include contracts, consumer protection, constitutional and civil rights law, campaign finance and election law, land use and tax credits.

At the regional and national law firms, my clients were primarily companies and other entities, such as non-profits, as well as individuals. My practice touched on many areas of law that result in investigations or litigation including: antitrust, campaign finance and elections, constitutional, consumer, contract, criminal, data security and privacy, False Claims Act, intellectual property, tax and torts.

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.

Except for the time (2001-2003) I served as Legal Counsel in the North Carolina Governor's office, most of my work has been disputes-related. While I have done some investigations (either for a company's internal use or as an outside investigator), more of my work has been as a litigator in the public or private sectors either handling matters directly or overseeing others.

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 40%
   3. other courts: 0%
   4. administrative agencies: 20%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 80%
   2. criminal proceedings: 20%

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

I have been directly involved in approximately ten cases that have reached final judgment at the trial level. In four of the cases I was lead counsel. In the others, I was co-counsel. Additionally, I have handled several matters at the appellate level where other attorneys oversaw the case at trail.

i. What percentage of these trials were:
   1. jury: 10%
   2. non-jury: 90%

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

I have not argued orally before the Supreme Court and have not filed a merits brief.

Petition for Writ of Certiorari, *West v. Lynn*, No. 97-1829 (1988)

Petition for Writ of Certiorari, *CPC Int'l Inc. v. Archer Daniels Midland Co*., No. 94- (Dec. 21, 1994)

Amici brief (for Lawyers' Committee for Civil Rights Under Law, ACLU, Women's Legal Defense Fund, National Women's Law Center, and National Council of La Raza), *Adarand Constructors, Inc. v. Pena,* No. 93-1841 (Dec. 6, 1994)

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

a. the date of representation;

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

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

Abby Wambach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015 vs. Canadian Soccer Association and FIFA
2014-18923-I
Human Rights Tribunal of Ontario
Adjudicator Jo-Anne Pickel
2014-2015

Summary: I organized a legal effort brought on behalf of the world's best women's soccer players to challenge gender discrimination at the 2015 World Cup. The suit was withdrawn as the tournament neared and FIFA threatened to cancel the event if the players prevailed. The litigation achieved several goals including an increase in prize money, the use of goal line technology, a finding that FIFA could be subject to another nation's courts, and a commitment by FIFA to play subsequent women's World Cups on natural grass. A discussion of the suit by ESPN's legal analyst is available here.

Co-Counsel: Colleagues with the Washington, DC office of Boies, Schiller & Flexner including Everett "Rocky" Collis (now in business; 310-773-9909) and Joshua M. Stein (now with Fenwick & West LLP, 650-335-4954)

Catherine Mercier of Osler Hoskin & Harcourt (now with Singleton & Urgquhart | 150 King St | Toronto, ON | 416-585-8600)|

David Wright of Ryder Wright Blair and Holmes LLP | 333 Adelaide St | Toronto, ON | 416-340-9070

Opposing Counsel: Joseph Arvay (now deceased) of Farris LLP | 700 W Georgia Street | Vancouver, BC | 604-684-9151

Corporate Express Office Products, Inc. v. North Carolina Division of Purchase and Contract and Office Depot, Inc.
North Carolina Office of Administrative Hearings (and later NC Superior Court)
No. 06 DOA 0112
Hon. Beecher Gray
2005-2006

Summary: I served as lead counsel for the lowest price bidder (Corporate Express) on the State of North Carolina's office supplies contract worth $120 million dollars. The contract was wrongfully awarded by the State's procurement agency to a higher priced bidder (Office Depot). After intensive discovery, which revealed a conflict-of-interest between the State's outside consultant and the higher-priced bidder, the bid protest was tried to an Administrative Law Judge who ruled in my client's favor resulting in substantial savings to taxpayers.

Co-counsel: Chris Graebe of Womble Carlyle (now with Graebe Hanna & Sullivan PLLC | 4350 Lassister Rd | Raleigh, NC 27609 | 919-863-9090)

Opposing Counsel: Donald R. Teeter and Susan R. Lundberg | N.C. Department of Justice | 116 W. Jones Street | Raleigh, NC 27602 | 919-716-6400

Hayden "Jay" Silver of Kilpatrick Townsend (now with Womble Bond Dickinson | 555 Fayetteville St | Raleigh, NC 27601 | 919-755-2100)

Dale Brown and Beverly Matthews v. Washington Lawyers Committee
No. 95CA001287
District of Columbia Superior Court
Judge Richard S. Saltzman
1994-1996

I represented a civil rights organization sued for alleged discrimination against two staff members. The lawsuit was tried to a jury. The jury found no liability with regard to one plaintiff and awarded a nominal amount to the other plaintiff. The *Legal Times* ranked the case as one of the "Ten Most Important" in D.C. courts in an annual survey.

Co-Counsel: James E. Coleman, Jr. of Wilmer Cutler and Pickering (now Duke Law School | (919) 613-7057)

Opposing Counsel: Robert L. Bell of Washington, D.C. (apparently retired)

Eli Global, LLC and Greg Lindberg, v. James A. Heavner
No. 12PA17
Supreme Court of North Carolina
2017-2018

After the North Carolina Court of Appeals re-instated a defamation lawsuit, I entered the case on behalf of the defendant. I successfully petitioned the state Supreme Court to review the lower court ruling. The Supreme Court unanimously vacated the Court of Appeals in an important victory for free speech.

Co-Counsel: Richard M. Hutson |2530 Meridian Parkway | Durham, NC 27702 | (919) 683-1516
Joseph Blocher of the Duke Law School | 210 Science Drive | Durham, NC 27708 | (919) 613-7018

Opposing Counsel: Matthew Leerberg of Smith Moore Leatherwood LLP (now with Fox Rothschild | 434 Fayetteville Street | Raleigh, NC 27611 | (919) 755-8759

NAACP, et al. v. Gaston County, et al.
Case No. 20-CVS-3996
Gaston County Superior Court
Judge depending on assignment
2020 – Present

Along with other volunteer lawyers, I am representing organizations and individuals seeking judicial determination on whether a Confederate monument standing in front of a working courthouse violates provisions of the North Carolina Constitution.

Co-Counsel:
Cheryl D. Comer | 1542 Union Road | Gastonia, NC 28054

Cheyenne Chambers and Abraham Rubert-Schewel of Tin Fulton Walker & Owen, PLLC | 301 East Park Ave | Charlotte, NC 28203 | (704) 338-1220

Stuart M. Paynter and Gagan Gupta of The Paynter Law Firm | 106 S. Churton Street | Hillsborough, NC 27278 | (919) 245-3116

Opposing Counsel: Bradley K. Overcash of Parker Poe | 620 Tryon Street | Charlotte, NC. 28202 | (704) 372-9000

State of North Carolina v. William Henry Anderson, Jr.
Case No. 96-1218
North Carolina Court of Appeals (affirmed by NC Supreme Court)
Opinion by the Hon. John C. Martin (also on behalf of Judges Lewis and Wynn)
1996-1997

I served as lead counsel for the State of North Carolina on appeal and upheld the first-degree murder conviction of a dangerous armed felon sentenced to life imprisonment.

Opposing Counsel: Staples Hughes | N.C. Appellate Defenders Office | 123 West Main Street | Durham, NC 27701

Wendell J. Williamson v. Myron B. Liptzin, M.D.
Case No. 99-183; 141 N.C. App. 1; 539 S.E.2d 313 (2000)
North Carolina Court of Appeals (affirmed by NC Supreme Court)
1999-2000

The plaintiff was a UNC law student who killed two people in downtown Chapel Hill. After being found not guilty by reason of insanity, plaintiff filed a medical negligence case against a campus student health psychiatrist who had treated him. A jury sided with Williamson and ordered Dr. Liptzin to pay more than $500,000 in damages. I did not represent Dr. Liptzin at trial but, because I believed the jury verdict could negatively impact both psychiatrists and their patients, I thought it important for the judgment to be overturned. I helped organize Dr. Liptzin's appeal efforts, including the participation of state and national medical associations as amici (see here), and participated heavily in the briefing. The judgment was reversed by a unanimous panel of the Court of Appeals.

Co-Counsel: Matthew W. Sawchak of Smith Helms (now with Robinson Bradshaw | 434 Fayetteville Street | Raleigh, NC 27601 | 919-328-8800

James G. Exum, Jr. of Smith Helms (now retired but emeritus partner with Fox Rothschild LLP | 230 N. Elm Street | Greensboro, NC 27401 | 336-378-5385)

Opposing Counsel: Seth R. Cohen now with Deuterman Law Group | 3524 Lawndale Drive | Greensboro, NC 27408 | 866-908-8152

United States and State of North Carolina v. Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System
Case No. 3:16-cv-00311-RJC
United States District Court for the Western District of North Carolina
The Honorable Robert J. Conrad
2016-2018

My law firm and several others represented the Charlotte-Mecklenburg Hospital Authority (d/b/a Atrium Health f/k/a Carolinas Healthcare) in broad-ranging litigation arising from Atrium's contracts with major commercial insurance companies. In addition to the governmental case, there were multiple related class actions.

The government litigation included several years of intensive discovery and, ultimately, a settlement in 2018. The class actions were litigated in state and federal court and included decisions in favor of the hospital authority by the North Carolina Supreme Court in December 2020 and the Fourth Circuit in March 2021.

Co-Counsel: James P. Cooney | Womble Bond | 301 South College Street | Charlotte, NC 28202 (704) 331-4980

Opposing Counsel: John R. Read and Karl Knutsen of the Antitrust Division in the U.S. Department of Justice | 450 5th Street, N.W. | Washington, D.C. 20530 | (202) 307-0468

K.D. Sturgis with the North Carolina Department of Justice | 114 W. Edenton Street | Raleigh, NC 27603 | (919) 716-6000

United States ex rel. Thornton v. SAIC and Bendix (a division of AlliedSignal
No. 3:94-cv-0749
U.S. District Court, N.D. Texas, Dallas Division
Judge Robert Maloney
1995-1996

I served as lead counsel for a company and co-counsel with U.S. Attorney's office in a bench trial where we successfully defended a False Claims Act settlement against objection by an individual qui tam plaintiff.

Co-Counsel: Thelma Quince Colbert | U.S. Attorney's Office (N.D.Tex) | 1100 Commerce Street | Dallas, TX 75242 | (214) 659-8600

Opposing Counsel: Lawrence T. Bowman of Cozen O'Connor (now with Kane Russell Coleman & Logan PC | 901 Main Street | Dallas, TX 75202 | (214) 777-4200

United Therapeutics Corp. v. VS Lexington Ins. Co.
2012CVS2652
North Carolina Business Court
Hon. John R. Jolly
2012-2013

Represented a biotechnology company that incurred substantial losses due to accidental destruction of company drug products. When insurance company refused to pay policy claim, company filed suit which ultimately resulted in major settlement.

Co-Counsel: R. Steven DeGeorge of Robinson Bradshaw | 101 N. Tryon Street | Charlotte, NC 28246 | (704) 377-2536

Opposing Counsel: Leslie Packer of Ellis & Winters | 4131 Parklake Avenue | Raleigh, NC 27612 | (919) 865-7000

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

In the mid-1990s, I was part of a group of volunteer attorneys who assisted the NAACP as the group successfully dealt with severe revenue shortfalls and brought in new leadership including Myrlie Evers-Williams.

As Chief Legal Counsel for the Governor's office on 9/11, and in its aftermath, I worked with local, state, and federal public safety officials to obtain reliable information and act on it in order to reassure North Carolinians that safety risks and threats were being addressed and minimized.

I also oversaw the identification and vetting of a talented, diverse group of potential judges (with a marked increase of women candidates) for consideration and appointment by the Governor including Al Diaz (now on the Fourth Circuit), Yvonne Mims Evans (now a member of the NC Innocence Inquiry Commission), and G.K. Butterfield (now in Congress). I also served on the state's Hispanic-Latino Advisory Committee and served as the point person for the Governor's office on legal matters involving Native America tribes as well as with federal officials.

In the North Carolina Attorney General's office, I assisted with negotiations between tobacco companies, growers, public health advocates, and states that resulted in the Master Settlement Agreement (MSA). I assisted a task force seeking to address damage and threats to churches and

houses of worship. I advocated for the creation of a charitable foundation funded by company assets if Blue Cross Blue Shield NC converted from a non-profit to a for-profit company. I helped draft a Patients' Bill of Rights, assisted with major environmental settlements and legislation, and participated in crime prevention programs.

Upon leaving the public sector, I challenged government decisions that wasted taxpayer dollars or were otherwise ill advised. For example, I successfully represented the lowest-price bidder for a $120 million office supplies contract that was wrongfully denied the award. When some state lawmakers sought to overturn the litigation victory through legislation, I briefly registered as a lobbyist for the low-bidder (Corporate Express) in order to oppose the effort.

I have been informed that my name appears in a government database as a lobbyist for Limited Brands on a federal matter in the mid 2000s. I do not recall registering and do not believe I was required to do so. As I recall, Limited Brands was involved in tax litigation in North Carolina state courts and a company representative may have asked me to summarize the litigation for a Congressional staffer in case it was relevant to Congressional consideration of tax-related legislation.

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

    The Law of Politics: An Introduction to Campaign Finance and Election Law
    Duke Law School (1999-2001)
    Relying mainly on government agency publications and US Supreme Court opinions, I took students through the range of legal issues that can arise from the time a candidate announces she or he is running for office to possible post-election recounts. I am not able to locate the syllabi but readings included the following as sources: materials from the Federal Election Commission (FEC), the Federal Communications Commission (FCC), State Boards of Election, and SCOTUS decisions such as *Buckley v. Valeo*.

    Street Law Clinical Program
    Wilbur Cross High School (1991-1992)
    I taught basic legal concepts to high school students with a particular focus on practical areas such as housing, employment, and contract laws. There was not a syllabus.

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

    I have no arrangements in the future to be compensated for any financial or business interest.

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

    No.

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

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

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

    See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

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

       My spouse Jolynn Dellinger is an academic who regularly teaches courses at UNC Chapel Hill and Duke University. Her principal focus is on privacy law and policy, along with ethics and technology. I do not anticipate any conflict-of-interest issues related to her work but she occasionally does speak publicly about issues touching on her areas of expertise.

       My father Walter Dellinger is a member of the Presidential Commission on the Supreme Court.

       During my nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics officer to identify these and any other potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

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

If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional 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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Describe pro bono work in paragraph form. If your career has been spent in public service, explain how you went above your specific role to serve the public or specific groups of disadvantaged citizens.

Throughout my career, I have provided a meaningful amount of legal representation and advice free-of-charge including to individual victims of discrimination, to players subject to gender discrimination at the 2015 World Cup, and to community members seeking a judicial determination on the constitutionality of Confederate monuments. In addition to these matters, all discussed above, I have worked to increase opportunities for registered voters to cast ballots (through, for example, weekend voting and extended precinct hours).

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Patricia Tolliver Giles (née Patricia Denise Tolliver)

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

   United States District Judge for the Eastern District of Virginia

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

   United States Attorney's Office for the Eastern District of Virginia
   2100 Jamieson Avenue
   Alexandria, Virginia 22314

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

   1973; West Point, New York

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

   University of Virginia School of Law, 1995 – 1998; J.D., 1998
   University of Virginia, 1991 – 1995; B.A. with distinction, 1995

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.

   February 2003 – present
   United States Attorney's Office for the Eastern District of Virginia
   2100 Jamieson Avenue
   Alexandria, Virginia 22314
   Managing Assistant United States Attorney, Alexandria Division (2019 – present)
   Assistant United States Attorney, Major Crimes Unit (2003 – 2019)

November 2011 – November 2014
USPTO Innovation Station Child Development Center, Inc.
500 Dulany Street
Alexandria, Virginia 22314
Member of the Board of Directors (uncompensated)

Spring 2006, 2007, 2008
George Washington University, Forensic Sciences Department
2036 H Street, Northwest
Washington, District of Columbia 20052
Assistant Professorial Lecturer

October 2000 – January 2003
Cooley Godward LLP
11951 Freedom Drive, Suite 1500
Reston, Virginia 20190
Associate

October 1998 – August 2000
The Honorable Gerald Bruce Lee
United States District Court for the Eastern District of Virginia
401 Courthouse Square
Alexandria, Virginia 22314
Law Clerk

August 1998 – October 1998
The Honorable Gerald Bruce Lee
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
Law Clerk

August 1997 – May 1998
University of Virginia – Office of Housing and Residence Life
425 Treehouse Drive
Charlottesville, Virginia 22904
Graduate Advisor

Fall 1997 – Spring 1998 (Academic Year)
United States Attorney's Office for the Western District of Virginia
255 West Main Street
Charlottesville, Virginia 22902
Law Student Intern

Summer 1997

Rees Broome PC (formerly Rees, Broome, Diaz)
1900 Gallows Road, Suite 700
Tysons Corner, Virginia 22182
Summer Associate

August 1996 – May 1997
University of Virginia – Office of Housing and Residence Life
425 Treehouse Drive
Charlottesville, Virginia 22904
Graduate Advisor

Summer 1996
Enterprise Corporation of the Delta (now Hope Enterprise Corporation)
4 Old River Place, Suite A
Jackson, Mississippi 39202
Legal Intern

Summer 1995
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Summer Legal Assistant, Sponsors of Educational Opportunity (SEO)

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.

   Executive Office of United States Attorneys, Director's Award for Superior Performance as an Assistant United States Attorney – Criminal (2020)

   Washington Field Office, Federal Bureau of Investigation, Service Award (2018)

   Letter of Recognition from the Office of the Attorney General for service on the Attorney General's Review Committee on Capital Cases (2014)

   Virginia Trial Lawyers Trial Advocacy Award, University of Virginia School of Law Recipient (given to the graduating student chosen as the most outstanding in trial advocacy) (1998)

Certificate of Recognition for Outstanding Service to the United States Attorney's Office as a Law Student Intern (Western District of Virginia) (1997 – 1998)

Editorial Board Member, Virginia Journal of Social Policy and the Law (approximately 1997 – 1998)

Distinguished Majors Program, University of Virginia (1994 – 1995)

Intermediate Honors, University of Virginia (required being in the top twenty percent of the class by the end of the fourth semester) (1993)

Echols Scholar Program, University of Virginia, College of Arts and Sciences' honors program (selected as incoming first year based on academic achievement and leadership) (1991 – 1995)

I do not recall the names of all the scholarships that I received during college and law school, however, the list includes:

Henry A. Dudley Scholarship

University of Virginia Achievement Award Scholarship

National Achievement Scholarship Finalist

Twentieth Century Women's Club, Inc's Doretha Peanort Scholarship

Exchange Club Youth of the Year Scholarship

Hampton Alumnae Chapter of Delta Sigma Theta Sorority's Eva C. Mitchell Scholarship

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

   Federal Bar Association, Northern Virginia Chapter

   George Mason Inn of Court

   Northern Virginia Black Attorneys Association

   Old Dominion Bar Association, Secretary (2000 – 2002)

   Virginia State Bar Young Lawyers Conference

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, 1998

There have been no lapses in membership.

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

United States Court of Appeals for the Fourth Circuit, 1999
United States District Court for the Eastern District of Virginia, 2000

There have been no lapses in membership.

11. **Memberships**:

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

Alpha Kappa Alpha Sorority, Inc. (1992 – present)

USPTO Innovation Station Child Development Center, Inc. Board of Directors, Member (2011 – 2014)

Since 2014, I have also been involved in the Parent Teacher Association at my local school.

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

Membership in Alpha Kappa Alpha Sorority, Incorporated is extended only to women. Alpha Kappa Alpha Sorority, Incorporated is an international service organization. With this exception, to the best of my knowledge, none of the

above listed organizations currently discriminate or have formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

None.

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

None.

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

None.

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

May 16, 2021: Speaker, Page 1 Foundation, Virtual. I spoke with high school students about my job as an Assistant United States Attorney, the importance of public service, and the importance of making good decisions throughout life. I have no notes, transcript, or recording. Page 1 Foundation does not have a physical address.

November 9, 2020: Guest speaker, Introduction to the Legal System course, Marymount University, Virtual. Presentation supplied.

January 24, 2020: Speaker, Federal Bar Association Northern Virginia Chapter's Annual Introduction to the Federal Courthouse, Alexandria, Virginia. Notes supplied.

October 1, 2019: Presenter, "Federal Gang Prosecutions," Northern Virginia Criminal Justice Training Academy, Ashburn, Virginia. I used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided.

September 13, 2019: Panelist, "Developing a Great Opening Statement that Will Shape the Themes of Your Case Even if You Never Go to Trial," Virginia Bar Association's 49th Annual Conference on Labor and Employment Law, Leesburg, Virginia. Notes supplied.

November 9, 2018: Invocation, Investiture of G. Zachary Terwilliger as the United States Attorney for the Eastern District of Virginia, Alexandria, Virginia. Notes supplied.

September 29, 2017: Speaker, Portrait Ceremony of the Honorable Gerald Bruce Lee, United States District Judge, Alexandria, Virginia. Notes supplied.

November 2015 (I do not recall the specific day): Speaker, The George Washington University Law School, Washington, District of Columbia. I first spoke with students in the Career Center and later members of the Black Law Students Association about the United States Attorney's Office for the Eastern District of Virginia. I have no notes, transcript, or recording. The George Washington University Law School is located at 2000 H Street, Northwest, Suite 203, Washington, District of Columbia 20052.

October 22, 2014: Remarks, Diverse Partners Network Reception, Washington, D.C. I briefly spoke with a group of summer associates about the hiring process and work performed at the United States Attorney's Office for the Eastern District of Virginia. Notes supplied.

April 15, 2013: Speaker, Just the Beginning Foundation, Alexandria, Virginia. I do not recall my remarks but typically when I speak to youth, I focus on explaining my career path. I have no notes, transcript, or recording. The address for Just the Beginning Foundation is 70 West Madison Street, Chicago, Illinois 60602.

November 30, 2011: Panelist, Civil Rights Summit, Northern Virginia Criminal Justice Training Academy, Ashburn, Virginia. I provided remarks on issues that arise in prosecuting sex trafficking cases with juvenile victims. I have no notes,

transcript, or recording. The address for the Northern Virginia Criminal Justice Training Academy is 45299 Research Place, Ashburn, Virginia 20147.

November 2011 (Estimate): Speaker, Upward Bound Career Day, Old Dominion University, Norfolk, Virginia. I spoke with Upward Bound students about my career path as a law clerk, civil attorney in private practice, and federal prosecutor. I have no notes, transcript, or recording. The address for Upward Bound, Old Dominion University is Student Success Center, Room 2006, Norfolk, Virginia 23529.

July 20, 2010: Just the Beginning Foundation Summer Legal Institute Mock Trial, Alexandria, Virginia. I have no notes, transcript, or recording. After the presentation of the mock trial, the lawyers typically speak with students about their career paths. The address for Just the Beginning Foundation is 70 West Madison Street, Chicago, Illinois 60602.

2007 – 2010: Virginia State Bar Professionalism Course. As a member of the Virginia State Bar's professionalism faculty, I spoke with new admittees about the importance of civility and professionalism in their practice. I have no notes, transcript, or recording. The address for the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

November 15, 2007; November 3, 2005; October 27, 2005: Speaker, National Youth Leadership Forum, Tysons Corner, Virginia. Notes supplied.

October 29, 2007: When searching through my electronic records, I recovered a file entitled "Outline for Immigration and Criminal Gang Presentation." The file is date stamped October 28, 2007, and corresponds to a hand-written notation on my calendar "Gang Presentation." I do not recall presenting to any group either within or outside of the U.S. Attorney's Office. A copy of the outline is attached.

Fall 2007 (Estimate): Presenter, Governor's Prevention Comes First Conference. I do not recall the remarks that I made. I have no notes, transcript, or recording. The Governor's Prevention Comes First Conference does not have a physical address.

December 2006 (Estimate): FBI Academy, New Agent Training, Quantico, Virginia. I participated in a training exercise for new agents by conducting a mock cross-examination of the trainees. After the exercise, I also provided feedback to the trainees. I have no notes, transcript, or recording. The address of the FBI Academy is 1 Range Road, Quantico, Virginia 22135.

September 2006 (Estimate): Panelist, Issues Regarding Witness Protection. This was a conference for law enforcement officers sponsored by the FBI National Academy. I do not recall the location of the conference. The panel discussed various issues concerning witness protection. I used notes for this presentation,

but because the materials are law enforcement sensitive they are not provided.

June 19, 2006: Lawyer Participant, National Judicial College Training, Capital Case Jury Selection. I served as the prosecutor in a mock jury selection for capital cases that was part of a training exercise for Virginia circuit court judges. I have no notes, transcript, or recording. The address for the National Judicial College is 1664 North Virginia Street, Reno, Nevada 89557.

May 24, 2004: Speaker, The National Honor Society Induction Ceremony, Kecoughtan High School, Hampton, Virginia. Speech supplied.

July 1999 – present: Kamp Kappa Street Law Program, Alexandria, Virginia. For the past twenty years, I have participated in annual mock trial presentations aiming to teach young boys about the legal system. While the format of the program has changed throughout the years, the mock trial typically occurs during the course of a morning. After the mock trial, the lawyers typically speak with the students about their career paths. I have no notes, transcript, or recording. Kamp Kappa is sponsored by the Alexandria-Fairfax Alumni Chapter of Kappa Alpha Psi, Inc., which is located at 6343 South Kings Highway, Alexandria, Virginia 22306.

June 1999 (approximately): Speaker, Upward Bound Graduating Class, Old Dominion University, Norfolk, Virginia. Speech 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.

None.

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 cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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 of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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 offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held memberships in, or rendered services 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;

From October 1998 to August 2000, I clerked for the Honorable Gerald Bruce Lee of the United States District Court for the Eastern District of Virginia.

From August 1998 to October 1998, I clerked for the Honorable Gerald

Bruce Lee in the Fairfax County Circuit Court.

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

I have never practiced alone.

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

2000 – 2003
Cooley Godward LLP
11951 Freedom Drive, Suite # 1500
Reston, Virginia 20190
Associate

2003 – present
United States Attorney's Office for the Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314
Managing Assistant United States Attorney (2019 – present)
Assistant United States Attorney (2003 – 2019)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From October 2000 to January 2003, I was an associate at Cooley Godward in the General Commercial Litigation Section. I drafted briefs and pleadings for state and federal court proceedings, conducted document reviews, drafted and responded to discovery requests, and counseled clients on litigation matters. My work included a wide variety of commercial cases in the areas of contracts, intellectual property, securities, and employment law. While at Cooley Godward, my work was 100 percent civil.

From February 2003 until January 2019, I served as an Assistant United States Attorney for the Eastern District of Virginia and was assigned to the Major Crimes Unit. During this time, 100% of my work was criminal. I

handled every aspect of my cases from investigation, grand jury proceedings, motions, trial, appeal, and habeas litigation. I tried approximately 22 cases to verdict in United States District Court and argued three cases before the United States Court of Appeals for the Fourth Circuit. I prosecuted a variety of cases, including violent crimes in aid of racketeering, bank and other commercial robberies, human trafficking, crimes against children, as well as firearm, immigration, and narcotics offenses. Most notably, I prosecuted a capital murder case against members of the violent street gang, MS-13, for killing a pregnant federal witness.

Since January 2019, I have served as Managing Assistant United States Attorney. In this role, I manage the day-to-day operations of the Alexandria Division of the U.S. Attorney's Office for the Eastern District of Virginia. I do not maintain an active criminal docket but occasionally handle post-conviction litigation and supervise the legal work of others.

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

While in private practice, I primarily represented companies involved in commercial disputes relating to contracts, intellectual property, securities, and employment law. Among other matters, I represented a company and its corporate directors and officers in a suit alleging securities fraud and common law fraud in state court; a company sued for breach of an employment contract in federal court; and a corporation sued in federal court for breach of a merger agreement and violation of state and federal securities laws.

During my tenure at the United States Attorney's Office, I have represented the United States in criminal litigation.

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

All of my practice has been in litigation. Prior to my selection as Managing Assistant United States Attorney, I frequently appeared in court. As an Assistant United States Attorney for more than 16 years, I handled jury trials, guilty pleas, sentencings, suppression hearings, other substantive motions, and grand jury proceedings in the United States District Court for the Eastern District of Virginia. I also argued three cases before the United States Court of Appeals for the Fourth Circuit.

As a line Assistant United States Attorney from February 2003 until January 2019, my work was 100 percent in federal criminal practice. As an associate at

Cooley Godward from October 2000 to January 2003, my work was 100 percent civil and was both in state court and federal court.

i. Indicate the percentage of your practice in:
   1. federal courts: 98%
   2. state courts of record: 2%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 15%
   2. criminal proceedings: 85%

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

I have tried approximately 22 cases to verdict in District Court. In all but approximately five of these, I served as chief counsel. In the remaining five, I was associate counsel.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

c. the individual name, addresses, and telephone numbers of co-counsel and of

principal counsel for each of the other parties.

1. *United States v. Lazo, Guadron-Rodriguez, Treminio-Tobar, Benitez Pereira, Flores-Maravilla, Velasquez Guevara, Viera-Gonzalez, Centeno, Sanchez*, 816 F. App'x 752 (4th Cir. May 28, 2020) (Thacker, Harris, Richardson, JJ.); Criminal No. 1:16cr209 (O'Grady, J.); Dates of Representation: 2016 – present

I served as the lead prosecutor in this case against nine members and associates of MS-13. Several defendants were charged for their respective roles in the kidnapping and murder of an 18-year-old who was targeted because the defendants believed he was a member of the rival 18th Street gang. They lured the victim into their vehicle under the guise of going to a party. Instead, they transported him from Leesburg, Virginia to a secluded area in West Virginia where they beat, restrained, and then stabbed him more than 50 times. Prior to this murder, several of the defendants had also engaged in a conspiracy to extort another victim, threatening to harm him or his family unless he made regular extortion payments to the gang. The indictment charged conspiracy to use interstate facilities to carry out extortion; use of interstate facilities to carry out extortion; conspiracy to commit kidnapping; conspiracy to commit kidnapping and murder in aid of racketeering; kidnapping resulting in death; and accessory after the fact. Nine defendants were indicted; three pleaded guilty and the remaining six proceeded to trial. I handled several pre-trial motions, including successfully opposing a motion to suppress. The trial lasted approximately one month. I delivered the opening statement and conducted the direct examination of several witnesses, including cooperating gang members, law enforcement, a computer forensic expert, and lay witnesses. I cross-examined three defendants. In March 2018, the defendants were convicted of all charges. All of those involved in the murder received life sentences. All convictions were affirmed on appeal.

Co-counsel
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Alexandria, VA 22314
(703) 299-3821

Tobias D. Tobler, Esq. (then Assistant United States Attorney – Eastern District of Virginia)
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Alexandria, VA 22314

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Law Office of Christopher Amolsch
604 Cameron Street
Alexandria, VA 22314
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Alexandria, VA 22314
(703) 548-5000

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Lavonda N. Graham-Williams, Esq. (then defense attorney in private practice)
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(202) 638-4100

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2. *United States v. Maynes*, 880 F.3d 110 (4th Cir. 2018) (Wilkinson, Shedd, Diaz, JJ.); Criminal No. 1:15cr336 (O'Grady, J.); Dates of Representation: 2016 – 2017

Defendant Maynes was the leader of Horse Block Pimpin, a sex trafficking organization responsible for trafficking countless women and even some juveniles in Virginia and nationwide. Defendant Maynes, along with two family members who were separately prosecuted, targeted women who were homeless, drug addicted, had young children, or who had lost custody of their children. The men would routinely induce women to work for them by making false promises of financial assistance or a better life. They would then isolate the women geographically and socially, use violence and drugs to control them, and even withhold access to their children until they reached a daily quota of sex acts. This was a two-year investigation conducted by another prosecutor, who transferred to a new office. I was then assigned as lead prosecutor, and provided only two months to learn the case and prepare for Defendant Maynes' trial. I delivered the opening statement and rebuttal argument, conducted the direct examination of several witnesses, and cross-examined the defendant. After a four-day jury trial, Defendant Maynes was convicted of conspiracy to commit sex trafficking and four counts of sex trafficking by force, fraud, and coercion. After trial, the Court appointed new counsel for Defendant Maynes. I drafted and argued the oppositions to Defendant Maynes' post-trial motions, including a motion for judgment of acquittal. His motions were denied, and he was sentenced to 35 years' imprisonment.

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3. *United States v. Lewis, Dicks*, 614 F. App'x 628 (4th Cir. June 17, 2015) (Shedd, Floyd, Thacker, JJ.); Criminal No. 1:14cr15 (O'Grady, J.); Dates of Representation: 2014 – 2017

I was the lead prosecutor in this case. In November 2013, Defendant Lewis, along with an accomplice, robbed a tobacco store. During the robbery, Defendant Lewis shot the cashier in the head. Although severely injured and permanently disabled, the victim survived. Three days later, Defendant Lewis, along with Defendant Dicks and two other conspirators, robbed a Safeway grocery store. During the course of the robbery, Defendant Lewis disarmed a customer of his personal firearm. Then, before fleeing the store, Defendant Lewis shot at this same customer as the customer was kneeling on the floor with his arms raised. Although the robbers wore masks, surveillance footage showed all four men casing the store the day before the robbery. Defendant Lewis pleaded guilty to two counts of using a firearm during and in relation to a crime of violence, and was sentenced to 35 years' imprisonment. Defendant Dicks proceeded to trial. I delivered the opening statement and rebuttal argument, and conducted the direct examination of several witnesses. After a three-day jury trial, Defendant Dicks was convicted of conspiracy to obstruct commerce by robbery, and was sentenced to 12 years' imprisonment. Defendant Dicks appealed his conviction. I wrote the appellate brief. His conviction was affirmed.

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4. *United States v. Reed, Winston, Cannon, Dyer*, 780 F.3d 260 (4th Cir. 2015) (Floyd, Agee, Diaz, JJ.); Criminal No. 1:13cr48 (Hilton, J.); Dates of Representation: 2013 – 2017

I was the lead prosecutor in the case against Defendants Reed, Winston, Dyer, and Cannon. The men were part of a neighborhood crew responsible for a series of armed robberies in Virginia and Maryland. During the robberies, the men were always masked and armed with semiautomatic firearms. They were captured after they robbed a federal credit union in Northern Virginia and law enforcement traced the GPS devices hidden in the stolen money. At the time of their arrest, several of the men were also under investigation for murdering a witness in Maryland, and shooting the witness's two-year-old child in the process. In the Eastern District of Virginia, the defendants were indicted and tried for Hobbs Act conspiracy, three counts of Hobbs Act robbery, robbery of a credit union, multiple counts of using a firearm during and in relation to a crime of violence, and being convicted felons in possession of firearms. At trial, the government offered close to 50 witnesses. I conducted the direct examination of numerous witnesses, including experts in the following fields: mitochondrial DNA, nuclear DNA, microscopic hair comparison, fingerprints, and firearms. I also delivered the opening statement and rebuttal argument. After a four-day jury trial, the defendants were convicted on all counts, and each was sentenced to 60 years of imprisonment. They appealed their convictions. I wrote a portion of the appellate brief. The defendants' convictions were affirmed.

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5. *United States v. Garcia-Guinea, Zuniga-Perez, Escobar, Florian, Ramos Perez*, Criminal No. 1:11cr212 (Lee, J.); Dates of Representation: 2011 – 2017

From August 2010 through March 2011, the defendants were responsible for numerous armed robberies and an attempted armed robbery of businesses in Prince William and Fairfax counties as well as numerous robberies in Maryland. The group targeted small stores that primarily served the Latin American community and also conducted money transfers. All of the robberies created a dangerous situation as the defendants were armed. However, two were particularly dangerous because shots were fired at a store employee and a store owner who briefly pursued the robbers. All of the defendants, with the exception of Defendant Garcia-Guinea, were in the midst of plotting to rob a bank in Pennsylvania when they became the targets of an undercover investigation in Washington, D.C. I served as the lead prosecutor in the Virginia case. All of the defendants, with the exception of Defendant Florian, pleaded guilty prior to the trial. At Defendant Florian's trial, I delivered the opening statement, and conducted the direct examination of several cooperating witnesses, law enforcement officers, and victims. After a two-week trial, Defendant Florian was convicted of conspiracy. He did not appeal his conviction.

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6. *United States v. Juarez-Santamaria*, 513 F. App'x 306 (4th Cir. Mar. 8, 2013) (Traxler, Keenan, Thacker, JJ.); Criminal No. 1:11cr217 (O'Grady, J. (trial); Ellis, J. (pretrial)); Dates of Representation: 2010 – 2013

I served as lead counsel in the prosecution of Defendant Juarez-Santamaria for sex trafficking a minor, transportation of a minor for the purpose of prostitution, and conspiracy. Defendant Juarez-Santamaria, a member of the transnational gang MS-13, prostituted a 12-year-old girl. The victim was a runaway, who had turned to Defendant Juarez-Santamaria for help. Instead, he prostituted the victim in Virginia, Washington, D.C., and Maryland. On the first night, Defendant Juarez-Santamaria took her to a gas station where she was required to have sex with five men on a dirty mattress. At trial, I gave the opening statement, conducted the direct examination of the juvenile victim and several other witnesses, and made the rebuttal argument. After a two-day jury trial, Defendant Juarez-Santamaria was convicted, and later sentenced to life imprisonment. The defendant appealed his conviction. I co-authored the appellate brief and argued the appeal before the Fourth Circuit. His conviction was affirmed.

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7. *United States v. Lobo-Lopez, Amador*, 468 F. App'x 186 (4th Cir. Mar. 1, 2012) (Shedd, Diaz, Floyd, JJ.); Criminal No. 1:08cr194 (Ellis, J.); Dates of Representation: 2007 – 2014

Defendants Lobo-Lopez and Amador, two MS-13 members, fatally shot a young man who was a rival gang member. In the months preceding the victim's murder, the gang had been trying to locate the victim, who they believed was boldly advertising his allegiance to the 18th Street gang. The defendants were indicted for conspiracy to commit murder in aid of racketeering activity, murder in aid of racketeering activity, and use of a firearm during a crime of violence. I second-chaired the trial. I drafted and argued the United States' oppositions to several pre-trial motions, including a motion to suppress identification, a motion for exculpatory information, and several motions to compel. Defendant Amador pleaded guilty. At Defendant Lobo-Lopez's trial, I conducted the direct examination of several witnesses, and delivered the closing argument. After a six-day jury trial, Defendant Lobo-Lopez was convicted of all charges and sentenced to life imprisonment. He appealed his conviction. I wrote a portion of the appellate brief. Defendant Lobo-Lopez's conviction was affirmed.

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8. *United States v. Jennings*, 496 F.3d 344 (4th Cir. 2007) (Wilkinson, Niemeyer, Gregory, JJ.); Criminal No. 1:05cr559 (Ellis, J.); Dates of Representation: 2005 – 2007

Defendant Jennings was indicted for abusive sexual contact of a minor. Defendant Jennings molested a 13-year-old girl, who was flying unaccompanied on an overnight flight from California to Virginia. Prior to trial, the defendant moved to suppress his pre-Miranda and post-Miranda statements. I drafted and argued the opposition to the defendant's motion, which was denied. I second-chaired the trial, delivering the opening statement and conducting the direct examination of the minor victim as well as several other witnesses. Defendant Jennings was convicted and sentenced to six months' imprisonment, and he appealed. I drafted a portion of the brief and argued the appeal before the Fourth Circuit. The conviction was affirmed.

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9. *United States v. Kirlew, Fetters*, 291 F. App'x 536 (4th Cir. Sept. 5, 2008) (Wilkinson, Traxler, Gregory, JJ.); Criminal No. 1:07cr183 (Brinkema, J.); Dates of Representation: 2007 – 2008

In a span of two months following his release from prison, Defendant Kirlew engaged in a crime spree across several jurisdictions. He was arrested after a high-speed chase, during which he bailed out of a moving car. When he was apprehended after a foot chase, police recovered an empty gun holster in his pants and a gun and a bulletproof vest in the abandoned vehicle. Prior to the case being adopted for federal prosecution, Defendant Kirlew intimidated witnesses into signing statements claiming that they had never seen him with a gun or engaged in illegal activity. Defendant Fetters drafted some of the statements, and she pleaded guilty to obstruction of justice. Defendant Kirlew was indicted for being a convicted felon in possession of a firearm and a violent felon in possession of body armor. Defendant Kirlew's obstruction continued on the eve of trial when he threatened a key government witness after her grand jury testimony was disclosed in discovery. I was the lead prosecutor in Defendant Kirlew's prosecution. I drafted and argued the United States' opposition to the defendant's motion to exclude evidence. At trial, I examined several witnesses, and delivered the opening statement and rebuttal argument. Defendant Kirlew was convicted on all charges, and sentenced to 156 months' imprisonment, the statutory maximum. Defendant Kirlew appealed his conviction. I wrote the appellate brief. His conviction and sentence were affirmed.

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10. *United States v. Rivera, Grande, Cisneros, Orellana*, 353 F. Supp. 2d 623 (E.D. Va. 2005); 363 F. Supp. 2d 814 (E.D. Va. 2005); 363 F. Supp. 2d 827 (E.D. Va. 2005); 385 F. Supp. 2d 567 (E.D. Va. 2005); 405 F. Supp. 2d 662 (E.D. Va. 2005); 442 F. Supp. 2d 274 (E.D. Va. 2005); 213 F. App'x 155 (4th Cir. Dec. 21, 2006); 285 F. App'x 104 (4th Cir. July 28, 2008) (Lee, J.); Criminal No. 1:04cr283; Dates of

Representation: 2004 – 2008

This was a complex capital murder prosecution against four members of MS-13 for the murder of Brenda Paz, a pregnant federal witness. Ms. Paz was a runaway and a member of MS-13 who agreed to provide information about the gang to law enforcement. Ms. Paz was placed in the Witness Protection Program, but became lonely and returned to the gang. She was murdered because MS-13 was convinced that she had broken their code of silence. Her body was discovered along the banks of the Shenandoah River. At the time of her death, she was 16 weeks pregnant. I second-chaired this prosecution and trial. I handled the pre-trial death penalty motions and arguments, along with many other motions. The trial lasted two months. I conducted the direct examination of numerous witnesses, including the entomologist, several cooperating gang members, law enforcement officers, and other fact witnesses. I cross-examined one of the defendants. I also delivered the closing argument in the guilt phase of the trial, and the opening statement and closing argument in the penalty phase of the trial. The jury acquitted Defendants Orellana and Rivera (Defendant Rivera was already serving a life sentence for another murder). The jury convicted Defendants Grande and Cisneros, who were subsequently sentenced to life imprisonment. Neither appealed their convictions.

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

As a line Assistant United States Attorney for more than 16 years, I devoted a substantial amount of time to the investigation of potential criminal matters to determine whether a federal offense had in fact been committed, and if so, what charges would be appropriate. In that capacity, I have led investigative teams comprised of federal and local law enforcement officers as well as fellow Assistant United States Attorneys. Over the years, I have presented countless matters to federal grand juries.

In addition to my case-related responsibilities, I also performed several collateral duties within my office and the Department of Justice. From 2007 to 2010, I served as the Alexandria Division's Project Safe Neighborhood Coordinator. In that role, I was the primary point of contact between the United States Attorney's Office and the Bureau of Alcohol, Tobacco, Firearms and Explosives, and was responsible for the intake of cases involving firearm offenses. I also lectured incoming classes of Special Assistant United States Attorneys on firearm violations and supervised their handling of firearm cases. From 2010 to 2016, I served as the Capital Case Coordinator for the Eastern District of Virginia. This required me to work with other federal prosecutors from all four divisions (Alexandria, Richmond, Newport News, and Norfolk) who were handling capital eligible prosecutions. I advised them on the protocol for capital eligible cases, assisted them in preparing the Office's submissions to the Department of Justice, and reviewed their indictments to ensure that the death eligible factors were properly charged. From 2012 to 2014, I was selected to serve as a member of the Attorney General's Review Committee on Capital Cases. This required me to assess capital eligible prosecutions from United States Attorneys' Offices from around the country.

Additionally, in 2010, I served as the Summer Intern Coordinator, hiring and supervising eight criminal interns in the Alexandria Division. In 2014 and 2016, I also served on the Hiring Committee.

In January 2019, I was selected to serve as the Managing Assistant United States Attorney (MAUSA) for the Alexandria Division of the United States Attorney's Office for the Eastern District of Virginia (EDVA). The Alexandria Division serves as EDVA's headquarters and is the largest division in the District. It is comprised of approximately 78 Assistant United States Attorneys, approximately 30 Special Assistant United States Attorneys, and 86 administrative and legal support personnel and contractors. As the MAUSA, I manage the day-to-day operations of the Alexandria Division; develop division policy and procedures; attend all unit meetings for the Criminal and Civil Divisions regarding pending cases and investigations; assess and ensure the proper allocation of resources and support needs; oversee the supervision and hiring of criminal legal support; participate in the hiring of Assistant United States Attorneys; directly supervise eleven individuals; participate in employee training and mentoring; and serve as a liaison between the United States Attorney's Office and the United States District Court for the Eastern District of Virginia, the United States Marshals Service, the United States Probation Office, and various federal and local agency partners.

During my first year as MAUSA, I helped manage the longest government shutdown in

recent history and prepared the office for a comprehensive evaluation of the United States Attorney's Office's legal and administrative operations by the Executive Office for United States Attorneys (EOUSA) under the Evaluation and Review System (EARS), which occurs approximately once every five years. This is a top to bottom audit of all facets of the United States Attorney's Office. In the last year and a half, I have been managing the Alexandria Division during the COVID-19 pandemic. I developed and implemented safety protocols for the office, revised existing procedures as court operations reduced and then reopened, and ensured that mission critical functions continued. In conjunction with the District Court, I implemented a plan for reconvening the Alexandria grand juries, including drafting prescreening questions, reconfiguring the grand jury space, and developing safety protocols and procedures to ensure the health and safety of the grand jurors and participants.

Because of these unprecedented times, my MAUSA responsibilities have necessarily focused on managerial and operational responsibilities. I, however, have continued substantive participation in casework as a continuation of my prior 16 years of service as a line AUSA, handling post-conviction litigation as well as supervising the legal work of others. In 2020, I was honored to receive an EOUSA Director's Award for Superior Performance as an Assistant United States Attorney-Criminal for leading the trial team in *United States v. Lazo, et al.*, which resulted in the conviction of nine members of MS-13 for a gang-related murder and extortion.

While MAUSA, I have also continued to serve in other roles within my office and the Department of Justice. I am co-chair of the District's Diversity Committee; a member of the District's recently-founded Committee on Race, Policing, and Prosecution; and a member of the Attorney General's Transnational Organized Crime Task Force, MS-13 Subcommittee.

I conduct and coordinate both in-house and outside trainings for attorneys, agents, and legal support staff. For instance, in 2019, I conducted training on grand jury practice for new federal agents. On a bi-monthly basis, I conduct training on delivering effective opening statements to incoming attorneys in the Criminal Division of the United States Attorney's Office.

I have never performed lobbying activities or registered as a lobbyist.

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

For the spring semesters in 2006, 2007, and 2008, I taught Criminal Law III – Moot Court at The George Washington University, Forensic Sciences Department. The students were in the graduate program in the Forensic Sciences Department. The course taught them judicial procedure, the Federal Rules of Evidence, and how to testify in court as expert witnesses. I co-taught this course with another Assistant United States Attorney

with whom I divided the lectures during the semester. The major topics taught included relevance, hearsay and non-hearsay, exhibits, direct examination of experts, and impeachment procedures and methods. Syllabi supplied.

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

    I have no deferred income or other future benefits (I do have a 401K with my former law firm that is named "Cooley LLP Salary Deferral and Profit Sharing Plan," which is managed by Charles Schwab and identified in my Financial Statement).

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

    None.

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

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        The only potential conflicts of interest I foresee are cases or investigations that I have handled, or was indirectly involved with, while the Managing Assistant United States Attorney and an Assistant United States Attorney in the Eastern District of Virginia. If confirmed, I would recuse from all such cases.

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

If confirmed, I would evaluate and resolve any potential conflicts of interest on a case by case basis following the Code of Conduct for United States Judges and the rules and standards regarding disqualification specified in 28 U.S.C. § 455. I would also consult relevant judicial decisions and published advisory opinions issued by the Judicial Conference's Committee on Codes of Conduct.

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

As an Assistant United States Attorney, my ability to participate in pro bono litigation work has been restricted. I was also prohibited as a law clerk. However, the volunteer activities below encompass all of my years of practice and my clerkship.

For the past 20 years, I have been an organizer and volunteer for the Kamp Kappa Street Law Program, which is led by Judge Gerald Bruce Lee. Kamp Kappa is a week-long camp for at-risk boys, ages 10 to 16, that provides positive outdoor and educational programs. The Street Law Program is one component of the camp and introduces the boys to the law via a mock trial. When I initially began with the Street Law Program, the attorney volunteers would travel to the camp and coach the boys, who served as the defense attorneys, prosecutors, witnesses, and judges. Then, on the final day, the boys would travel to the courthouse and present the mock trial. Several years ago, Kamp Kappa moved to a facility that was further away so we revised the program. The attorneys conduct the mock trial and the boys serve as the jurors. Since starting with the Street Law Program as a law clerk, I have worked with it every year and co-chair in organizing the event. I have recruited and organized the other volunteers, coached the students when they were serving in the various roles, and served as one of the attorneys for the trial. I also co-authored many of the fact patterns, which in addition to teaching the boys about the law also serves to teach life lessons.

Additionally, I have devoted significant time to volunteering at my child's school, both in the school library and assisting teachers with administrative tasks.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission

recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On September 27, 2017, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. On October 24, 2017, I interviewed with the Senators' independent panel of attorneys. On November 2, 2017, I interviewed with Senator Kaine. On November 14, 2017, I interviewed with Senator Warner. On December 21, 2017, Senator Warner advised me that he and Senator Kaine would be referring my name to former President Trump for consideration. On January 4, 2018, I interviewed with attorneys from the White House Counsel's Office.

On May 17, 2018, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. I was advised that Senators Warner and Kaine referred my name to former President Trump for consideration.

On December 15, 2021, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. On March 18, 2021, I interviewed with Senators Warner and Kaine's independent panel of attorneys. On April 7, 2021, I was advised that I was selected to have a second-round interview with Senator Warner and Senator Kaine. Subsequently, a representative of Senator Warner's office contacted me and said that since Senators Warner and Kaine had interviewed me previously when I applied for a judicial vacancy, they did not need to re-interview me. On April 26, 2021, I received a call from Senator Kaine advising that Senators Warner and Kaine were recommending me to President Biden.

On April 29, 2021, I was contacted by the White House Counsel's Office to schedule an interview. On April 30, 2021, I interviewed with attorneys from the White House Counsel's Office. Since May 3, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Toby Jay Heytens

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

   United States Circuit Judge for the Fourth Circuit

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

   Office of the Virginia Attorney General
   202 North Ninth Street
   Richmond, Virginia 23219

   Residence: Charlottesville, Virginia

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

   1975; Duluth, Minnesota

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

   1997 – 2000, University of Virginia School of Law; J.D., 2000

   1996, University of Oslo; no degree received (international summer school program)

   1993 – 1997, Macalester College; B.A., 1997

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

2018 – present
Office of the Virginia Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Solicitor General (2018 – present)
Appellate Practice Transition Counsel (2018)

2006 – present
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Professor of Law (2014 – present)
David H. Ibbeken '71 Research Professor of Law (2015 – 2018)
Co-Director, Supreme Court Litigation Clinic (Spring 2011, 2014 – 2015, 2016 – 2017, Fall 2017)
Associate Professor of Law (2006 – 2014)

2017
Seattle Preparatory School
2400 Eleventh Avenue East
Seattle, Washington 98102
Mock trial camp instructor (June 2017)

2016
Seattle Preparatory School
2400 Eleventh Avenue East
Seattle, Washington 98102
Mock trial camp instructor (June 2016)

2014
Hogan Lovells US LLP
555 Thirteenth Street, Northwest
Washington, District of Columbia 20004
Contractor (March 2014)

2007 – 2010
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Assistant to the Solicitor General

2003 – 2006
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, District of Columbia 20006

Counsel (2005 – 2006)
Associate (2003 – 2004)

2005
Cornell Law School
Myron Taylor Hall
Ithaca, New York 14850
Visiting Assistant Professor of Law

2002 – 2003
Supreme Court of the United States
One First Street, Northeast
Washington, District of Columbia 20532
Law clerk for the Honorable Ruth Bader Ginsburg

2001 – 2002
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Bristow Fellow

2000 – 2001
United States Court of Appeals for the Third Circuit
613 Market Street
Philadelphia, Pennsylvania 19106
Law clerk for the Honorable Edward R. Becker

2000
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Summer associate

1999
National Prison Project of the American Civil Liberties Union
914 Fifteenth Street, Northwest, Suite 410
Washington, District of Columbia 20009
Summer law clerk

1999
Jenner & Block LLP
601 Thirteenth Street, Northwest
Washington, District of Columbia 20005
Summer associate

1998 – 1999
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Research assistant to Professor James E. Ryan

1998
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Research assistant to Professor Mary Anne C. Case

1998
The Thomas Jefferson Center for the Protection of Free Expression
400 Worrell Drive
Charlottesville, Virginia 22911
Summer law clerk

1997
People for the American Way
2000 M Street, Northwest, Suite 400
Washington, District of Columbia 20036
Summer intern

Other affiliations (uncompensated)

2010 – present
American Mock Trial Association
Webster Hall, Suite 212
3950 East Newman Road
Joplin, Missouri 64801
Director

2007 – present
Collegiate Mock Trial at the University of Virginia
[this organization does not have a mailing address]
Charlottesville, Virginia 22903
Coach of undergraduate mock trial team

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

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

To the best of my recollection, I have received the following honors and awards:

Coaches Hall of Fame, American Mock Trial Association (2021)

Shaping Justice Award for Extraordinary Achievement in Public Service, Public Interest Law Association at the University of Virginia (2021)

Best Brief Award, National Association of Attorneys General (2020)

Neal Smith Award, American Mock Trial Association (2020)

Lifetime Achievement, Superior (Wisconsin) Academic Hall of Fame (2019)

Best Brief Award, National Association of Attorneys General (2019)

Chief Justice W. Ward Reynoldson Award, American Mock Trial Association (2018, 2017, 2008)

Graduation Procession Marshall, University of Virginia (2017)

All-University Teaching Award, University of Virginia (2016)

David H. Ibbeken '71 Research Professor of Law, University of Virginia (2015)

Raven Award (Alumni), The Raven Society (2015)

Exemplary Legal Writing – Long Articles, *The Green Bag* (2014)

Exemplary Legal Writing – Briefs & Motions, *The Green Bag* (2006)

Alumni Association Award for Academic Excellence, University of Virginia School of Law (2000)

Roger & Madeline Traynor Prize, University of Virginia School of Law (2000)

Alumni Association Best Note Award, University of Virginia School of Law (2000)

Order of the Coif, University of Virginia School of Law (2000)

Articles Development Editor, *Virginia Law Review* (1999 – 2000)

Jackson & Walker Award, University of Virginia School of Law (1999)

Dr. Carl M. Franklin Prize for the First-Year Student with the Highest GPA, University of Virginia School of Law (1998)

Bracewell & Patterson Outstanding First-Year Oral Argument Award, University of Virginia School of Law (1998)

Phi Beta Kappa, Macalester College (1997)

W. Scott Nobles Prize in Communication Studies, Macalester College (1997)

Lowell Thomas Prize for Public Speaking, Macalester College (1997, 1996, 1995, 1994)

All-American Attorney, American Mock Trial Association (1997, 1995)

National Merit Scholarship, Macalester College (1993 – 1997)

Victor D. & Mary Nelson Scholarship, Superior (Wisconsin) Scholarship Foundation (1993 – 2000)

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

   Boyd-Graves Conference

   Charlottesville Bar Association

   Edward R. Coke Appellate Inn of Court

   Old Dominion Bar Association

   Virginia Bar Association
   Appellate Practice Section Council (2018 – present)

   Virginia State Bar
   Diversity Conference (2018 – 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.

       Maryland, 2003 (inactive)
       District of Columbia, 2004
       Virginia, 2016

There have been no lapses in membership. I took inactive status in Maryland in 2012, while I was a full-time faculty member at the University of Virginia School of Law.

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, 2007
United States Court of Appeals for the Third Circuit, 2004
United States Court of Appeals for the Fourth Circuit, 2016
United States Court of Appeals for the District of Columbia Circuit, 2019
United States District Court for the District of Columbia, 2018
United States District Court for the Eastern District of Virginia, 2018
United States District Court for the Western District of Virginia, 2018

There have been no lapses in membership.

11. **Memberships**:

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

American Constitution Society (2005 – 2006, 2019 – present)

American Mock Trial Association
Ombudsperson (2018 – present)
Development Chair (2014 – 2016)
Director (2010 – present)

Collegiate Mock Trial at the University of Virginia
Head Coach (2009 – present)
Assistant Coach (2006 – 2009)

Macalester College, Class Agent (2014 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

To my recollection and through searches of my own records and publicly available databases, I have found the following works that I authored or co-authored:

With Justin Bernstein, *Case materials for* Rogers v. Mars, American Mock Trial Association (2020). Copy supplied.

With Martine E. Cicconi, *Symposium: Channeling an old chief to reject a new immunity*, SCOTUSblog (2020). Copy supplied.

Two Centuries of Virginia in the Supreme Court, On Appeal (Spring 2020). Copy supplied.

With numerous others, *Case materials for* State of Midlands v. Jordan Ryder, American Mock Trial Association (2019). Copy supplied.

Symposium: Campaigns and consequences, SCOTUSblog (2018). Copy supplied.

Interview of Shana Knizknik, *AMTA Spotlight: Distinguished Alumna*, AMTAConnect (2016). Copy supplied.

With numerous others, *Case materials for* Riley Winter v. TBD, Inc., American Mock Trial Association (2016). Copy supplied.

Interview of Sarah Chervinsky, *AMTA Spotlight: Distinguished Alumna*, AMTAConnect (2015). Copy supplied.

Changing What Judges Do, 82 U. Chi. L. Rev. Dialogue 151 (2015). Copy supplied.

Reassignment, 66 Stan. L. Rev. 1 (2014). Copy supplied.

With numerous others, *Case materials for* Andy and Lee Park v. Hayden Duran, American Mock Trial Association (2014). Copy supplied.

Reassignment (and the Scheindlin Controversy), PrawfsBlawg (2013). Copy supplied.

With Sarah Sawtelle, *Earning a Bid: The Backstory of the 2013 NCT*, Pretrial Matters, Vol. 1, Issue 1 (Fall 2013). Copy supplied.

The Framework(s) of Legal Change, 97 Cornell L. Rev. 595 (2012). Copy supplied.

With numerous others, *Case materials for* Lee and Andy Allen v. Neptune Underwater Expeditions, American Mock Trial Association (2012). Copy supplied.

With numerous others, *Case materials for* Andy and Lee Davis v. HappyLand Toy Company, American Mock Trial Association (2010). Copy supplied.

With numerous others, *Case materials for* State of Midlands v. Jackie Owens, American Mock Trial Association (2009). Copy supplied.

Doctrine Formulation and Distrust, 83 Notre Dame L. Rev. 2043 (2008). Copy supplied.

Managing Transitional Moments in Criminal Cases, 115 Yale L.J. 922 (2006). Copy supplied.

School Choice & State Constitutions, 86 Va. L. Rev. 117 (2000). Copy supplied.

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

From 2019 to present, I have been a member of a committee of the Boyd-Graves Conference that prepared three reports involving possible reforms to Virginia's rules regarding service by publication. Copies supplied.

From 2016 to 2017, while at the University of Virginia School of Law, I co-chaired a committee on diversity, equity, and belonging that prepared an initial

draft of a report for the central University. I am unable to obtain a copy of the report. The University of Virginia School of Law's address is 580 Massie Road, Charlottesville, Virginia 22903.

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.

Testimony to the Local Government Committee of the Senate of Virginia (February 3, 2020). Recording available at https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=2998.

Testimony to the Public Safety Committee of the Virginia House of Delegates (January 24, 2020). Recording available at https://virginiageneralassembly.gov/house/chamber/chamberstream.php.

Testimony to the Judiciary Committee of the Senate of Virginia (January 15, 2020). Recording available at https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=2862.

Testimony to the Judiciary Committee of the Senate of Virginia (January 13, 2020). Recording available at https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=2842.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of David Stras to be Circuit Judge, U.S. Court of Appeals for the Eighth Circuit (May 11, 2017). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Amul Thapar to be Circuit Judge, U.S. Court of Appeals for the Sixth Circuit (undated letter, 2017). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Patricia Millett to be Circuit Judge, U.S. Court of Appeals for the D.C. Circuit (July 9, 2013). Copy supplied.

Comment to Rector and Board of Visitors of the University of Virginia (June 21, 2012). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Jesse Furman to be District Judge, U.S. District Court for the Southern District of New York (July 1, 2011). Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions,

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best effort to identify the speeches or talks I have delivered. To compile this list, I have searched my own records and Internet sources. There may, however, be other speeches or talks that I have been unable to recall or identify.

April 22, 2021: Guest Lecturer, Radford University, Radford, Virginia (Virtual Appearance). I was a guest moot court judge for undergraduate students in a class taught by Donald Martin. I have no notes, transcript, or recording. The address for Radford University is 801 East Main Street, Radford, Virginia 24142.

April 16, 2021: Presenter, American Mock Trial Association (Virtual Appearance). Recording available at https://www.youtube.com/watch?v=UdkBzTCwTIU. My portion begins at 34:55.

March 20, 2021: Panelist, "Alumni Discuss Experiences at UVA Law," University of Virginia School of Law, Charlottesville, Virginia (Virtual Appearance). Recording available at https://www.youtube.com/watch?v=bNZvgd4T8hw.

March 16, 2021: Guest Speaker, University of Virginia School of Law, Charlottesville, Virginia (Virtual Appearance). I was one of two guest speakers about state solicitor generals' offices for a class named "Law and Public Service." I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 21, 2021: Guest Speaker, Public Interest Law Association at the University of Virginia (Virtual Appearance). I gave brief remarks upon receiving the Shaping Justice Award from the Public Interest Law Association at the University of Virginia. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 9, 2021: Panelist, "Effective Legal Writing," John Marshall Inn of Court, Richmond, Virginia (Virtual Appearance). I was part of an online panel about effective legal writing sponsored by the John Marshall Inn of Court. I have no notes, transcript, or recording. The address for the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

January 8, 2021: Panelist, Menlo School, Menlo Mock Trial, Menlo School, California (Virtual Appearance). I was part of a panel about undergraduate mock trial competitions and their relationship to high school mock trial competitions. I have no notes, transcript, or recording. The address for the Menlo School is 50 Valparaiso Avenue, Atherton, California 94027.

November 21 – 22, 2020: Speaker, Collegiate Mock Trial at the University of Virginia (Virtual Appearance). I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 12, 2020: Panelist, American Academy of Appellate Lawyers, Rockville, Maryland (Virtual Appearance). I was a member of a panel about the life and legacy of Justice Ruth Bader Ginsburg. I have no notes, transcript, or recording. The address for the American Academy of Appellate Lawyers is 1300 Picard Drive, Suite LL 14, Rockville, Maryland 20850.

October 18, 2020: Mock Trial Judge, University of Virginia School of Law (Virtual Appearance). I judged the final round of an internal mock trial competition at the University of Virginia School of Law. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia, 22903.

October 6, 2020: Speaker, William & Mary Law School, Williamsburg, Virginia (Virtual Appearance). I spoke to a group of law students about the Equal Rights Amendment at an event sponsored by the American Constitution Society, the Women's Law Society, the Public Discourse Initiative, and If/When/How. I have no notes, transcript, or recording. The address for William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

September 30, 2020: Panelist, University of Virginia School of Law, Charlottesville, Virginia (Virtual Appearance). I was part of a panel about the life and legacy of Justice Ruth Bader Ginsburg sponsored by the University of Virginia School of Law's student chapter of the American Constitution Society. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia, 22903.

September 15, 2020: Panelist, VoteEquality! (Virtual Appearance). I was a panelist for one of the breakout groups as part of a webinar about the litigation in *Virginia v. Ferriero*. I have no notes, transcript, or recording. VoteEquality! does not appear to have a physical address.

September 4, 2020: Guest Speaker, University of Virginia School of Law, Charlottesville, Virginia. I spoke to a group of first-year law students in Professor Joe Fore's Legal Research and Writing class. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia, 22903.

August 20, 2020: Panelist, "Time to Talk Town Hall: Free Speech, Removal of Statues, and Ongoing Protests," Virginia State Bar, Diversity Conference, Richmond, Virginia (Virtual Appearance). Recording available at https://www.youtube.com/watch?v=S_QUrFCeRZk&fbclid=IwAR2M9vwHHnujDBKjAGrZ22tpeSjVhOABpjpez0rTboaTZOMRDNRB_hJ8nDI.

April 16, 2020: Guest Speaker, Georgetown University Law Center, Washington, District of Columbia (Virtual Appearance). I spoke to a class of law students about the Virginia Solicitor General's Office and state solicitors general offices generally. I have no notes, transcript, or recording. The address for Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, District of Columbia 20001.

March 2, 2020: Panelist, "AG Powers and Responsibilities: The Legal and Ethical Considerations of State Attorneys General Exercising Their Authority," National Association of Attorneys General Training and Research Institute, Washington, District of Columbia. I was part of a panel about whether and when state attorneys general have a duty to defend the constitutionality of state laws and policies. I have no notes, transcript, or recording. The address for the National Association of Attorneys General is 1850 M Street, Northwest, Twelfth Floor, Washington, District of Columbia 20036.

December 13, 2019: Guest Speaker, University of Virginia School of Law. I gave a talk about appellate advocacy sponsored by the William Minor Lile Moot Court Board. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

December 2, 2019: Guest Lecturer, University of Richmond School of Law, Richmond, Virginia. I spoke to law students about the U.S. Supreme Court's capital punishment jurisprudence. I have no notes, transcript, or recording. The address for the University of Richmond School of Law is 203 Richmond Way, Richmond, Virginia 23173.

November 23 – 24, 2019: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 14, 2019: Panelist, National Association of Attorneys General, Washington, District of Columbia. I was part of a panel about seeking and opposing certiorari before the Supreme Court of the United States. I have no notes, transcript, or recording. The address for the National Association of Attorneys General is 1850 M Street, Northwest, Twelfth Floor, Washington, District of Columbia 20036.

November 7, 2019: Panelist, Virginia Bar Association, Richmond, Virginia. I was on a panel about attorney general opinions as part of the Virginia Bar Association's annual administrative law conference. I have no notes, transcript, or recording. The address for the Virginia Bar Association is 111 East Main Street, Suite 905, Richmond, Virginia 23219.

October 26, 2019: Panelist, "Introduction to the Equal Rights Amendment," University of Richmond School of Law, Richmond, Virginia. I was on a panel as part of an event called "A New Era for the Equal Rights Amendment" that was organized by VA ratify ERA. Transcript supplied.

October 18, 2019: Speaker, American Bar Association, Government and Public Sector Lawyers Division Legal Skills Conference, Richmond, Virginia. I gave lunchtime remarks about the role of government lawyers and public service. I have no notes, transcript, or recording, but press coverage is supplied. The address for the American Bar Association is 1050 Connecticut Avenue, Northwest, Washington, District of Columbia 20036.

September 28, 2019: Award Recipient, Superior (Wisconsin) Hall of Fame Induction Ceremony, Superior, Wisconsin. I delivered brief remarks after being inducted into the Superior (Wisconsin) Academic Hall of Fame. I have no notes, transcript, or recording. The address for Superior Middle School is 3625 Hammond Avenue, Superior, Wisconsin 54880.

September 23, 2019: Guest Lecturer, William & Mary Law School, Williamsburg, Virginia. I spoke to law students about U.S. Supreme Court practice. I have no notes, transcript, or recording. The address for William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

September 23, 2019: Speaker, "The State Role in Checking Presidential Excess," William & Mary Law School, Williamsburg, Virginia. I gave a lunchtime talk that was jointly sponsored by the American Constitution Society and the William & Mary Institute of Bill of Rights Law. I have no notes, transcript, or recording, but have attached an image of a social media post that references the event. The address for William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

September 20, 2019: Panelist, Virginia State Bar, Williamsburg, Virginia. I was a member of a panel titled "Keeping the Pipeline Flowing and Employment Best Practices" as part of the Virginia State Bar's second annual Forum on Diversity in the Legal Profession that was held at William & Mary Law School in Williamsburg, Virginia. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Virginia State Bar is 1111 East Main Street, #700, Richmond, Virginia 23219.

September 13, 2019: Panelist, "Supreme Court Preview 2019 – Panel 1: Criminal Law," William & Mary Law School, Williamsburg, Virginia. Recording available at https://www.youtube.com/watch?v=aUTYetERtG8.

September 12, 2019: Moot Court Judge, "Supreme Court Preview 2019, Bostock v. Clayton County, Georgia," William & Mary Law School, Williamsburg, Virginia. Recording available at https://www.youtube.com/watch?v=XlGPQ2V6hmE.

August 16, 2019: Speaker, "Overview of the American Legal System and the Life of a Case," University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?v=lJOpSkyBl2Y.

August 2019 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

July 23, 2019: Panelist, Virginia State Bar Disciplinary Conference, Glen Allen, Virginia. I was part of a panel titled "Recent Developments in the Disciplinary System." I have no notes, transcript, or recording. The address for the Virginia State Bar is 1111 East Main Street, #700, Richmond, Virginia 23219.

July 22, 2019: Panelist, National Association of Attorneys General, Washington, District of Columbia (Virtual Appearance). I was part of an online panel titled "The Supreme Court Term in Review." I have no notes, transcript, or recording. The address for the National Association of Attorneys General is 1850 M Street, Northwest, Twelfth Floor, Washington, District of Columbia 20036.

July 11, 2019: Moderator, National Association of Attorneys General, Washington, District of Columbia. I interviewed Joan Biskupic about her book *The Chief* as part of the National Association of Attorneys General's annual state solicitor generals' conference. I have no notes, transcript, or recording. The address for the National Association of Attorneys General is 1850 M Street, Northwest, Twelfth Floor, Washington, District of Columbia 20036.

June 26, 2019: Speaker, Office of the Virginia Attorney General, Richmond, Virginia. I spoke as part of a brown-bag lunch series for interns in the Office of the Virginia Attorney General in Richmond, Virginia. I have no notes, transcript, or recording. The address for the Office of the Virginia Attorney General is 202 North Ninth Street, Richmond, Virginia 23219.

April 25, 2019: Speaker, Federal Bar Association, Roanoke Chapter, Roanoke, Virginia. Notes supplied.

March 6, 2019: Panelist, The Federalist Society for Law and Public Policy, Washington, District of Columbia. I was part of a panel of state solicitors general at an event sponsored by the Washington, DC young lawyers chapter of the Federalist Society for Law and Public Policy. I have no notes, transcript, or recording. The address for the Federalist Society for Law and Public Policy is 1776 Eye Street, Northwest, Suite 300, Washington, District of Columbia 20006.

February 25, 2019: Speaker, Hill-Tucker Bar Association, Richmond, Virginia. I gave a talk about recent developments in litigation before the Supreme Court of the United States. I have no notes, transcript, or recording. The address for the Hill-Tucker Bar Association is 2104 West Laburnum Avenue, Suite 201, Richmond, Virginia 23227.

February 1, 2019: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a talk about appellate advocacy sponsored by the William Minor Lile Moot Court Board. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

January 17, 2019: Guest Lecturer, University of Virginia School of Law, Charlottesville, Virginia. I spoke about recent decisions of the U.S. Supreme Court in a short course taught by the Honorable Pamela A. Harris. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

December 1 – 2, 2018: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 29, 2018: Panelist, National Association of Attorneys General, Washington, District of Columbia. I was part of a panel on opposing petitions for a writ of certiorari. I have no notes, transcript, or recording. The address for the

National Association of Attorneys General is 1850 M Street, Northwest, Twelfth Floor, Washington, District of Columbia 20036.

November 26, 2018: Guest Lecturer, University of Richmond School of Law, Richmond, Virginia. I spoke with students in the Clinical Placement Program class about careers in public service. I have no notes, transcript, or recording. The address for the University of Richmond School of Law is 203 Richmond Way, Richmond, Virginia 23173.

November 17, 2018: Moot Court Judge, Richmond, Virginia. I was a judge for the American Bar Association's National Appellate Advocacy Competition. I have no notes, transcript, or recording. The address for the American Bar Association is 1050 Connecticut Avenue, Northwest, Washington, District of Columbia 20036.

October 19, 2018: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.yiuu.de/podcast/uva-law/the-law-students-guide-to-becoming-solicitor-general.

October 18, 2018: Speaker, Charlottesville-Albemarle Bar Association, Charlottesville, Virginia. Notes supplied.

September 26, 2018: Panelist, "Leading the State: UVA's Attorneys General," University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?v=09MDT7jUcN4.

September 22, 2018: Panelist, William & Mary Law School, Williamsburg, Virginia. I was a member of two panels as part of William & Mary Law School's annual Supreme Court preview: a property rights panel and a lunchtime panel advertised as "The Legal 'Resistance' to the Trump Administration." I have no notes, transcript, or recording. The address for William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

September 20, 2018: Moderator, Virginia Bar Association's Appellate Summit, Richmond, Virginia. I moderated a panel on seeking and opposing certiorari before the U.S. Supreme Court. I have no notes, transcript, or recording. The Virginia Bar Association's address is 111 East Main Street, Suite 905, Richmond, Virginia 23219.

August 29, 2018: Panelist, Office of the Virginia Attorney General, Richmond, Virginia. I was part of a panel for attorneys in the Office of the Virginia Attorney General about writing for trial and appellate courts. I have no notes, transcript, or recording. The address for the Office of the Virginia Attorney General is 202 North Ninth Street, Richmond, Virginia 23219.

August 2018 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an

information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

July 21, 2018: Panelist, "The Roberts Court at Age 12: 2017 Supreme Court in Review," Virginia Bar Association Summer Meeting, Hot Springs, Virginia. Notes supplied.

June 6, 2018: Speaker, Office of the Virginia Attorney General, Richmond, Virginia. I was part of a brown-bag lunch series for interns in the Office of the Virginia Attorney General. I have no notes, transcript, or recording. The address for the Office of the Virginia Attorney General is 202 North Ninth Street, Richmond, Virginia 23219.

April 17, 2018: Moot Court Judge, University of Richmond School of Law, Richmond, Virginia. I was a moot court judge for law students. I have no notes, transcript, or recording. The address for the University of Richmond School of Law is 203 Richmond Way, Richmond, Virginia 23173.

April 11, 2018: Speaker, Food Frenzy Kickoff Luncheon, Richmond, Virginia. I spoke at the kickoff luncheon for an annual food drive sponsored by the Office of the Virginia Attorney General. I have no notes, transcript, or recording. The address for the Office of the Virginia Attorney General is 202 North Ninth Street, Richmond, Virginia 23219.

February 8, 2018: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I spoke to a group of law students about appellate oral advocacy. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

November 16, 2017: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a presentation on exam-taking techniques sponsored by the Black Law Students Association. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

November 11 – 12, 2017: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

October 5, 2017: Moot Court Judge, University of Virginia School of Law, Charlottesville, Virginia. I was a judge for a moot court competition. I have no

notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

October 4, 2017: Panelist, Virginia Law Review Public Service Roundtable, Charlottesville, Virginia. I was part of a panel about careers in public service. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

September 28, 2017: Moderator, University of Virginia School of Law, Charlottesville, Virginia. I was a moderator for a panel of judges of the Virginia Court of Appeals who were holding a special sitting at the University of Virginia School of Law. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

September 26, 2017: Guest Speaker, University of Virginia School of Law, Charlottesville, Virginia. Slides supplied.

September 8, 2017: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Notes supplied.

August 18, 2017: Guest Speaker, "What to Expect in the Law School Classroom," University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?v=-3kusFbA-VU.

August 2017 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

July 21, 2017: Panelist, "The Roberts Court at Age Eleven: The 2016 Supreme Court Term in Review," Virginia Bar Association, Hot Springs, Virginia. Notes supplied.

April 11, 2017: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Slides supplied.

March 24, 2017: Panelist, University of Virginia School of Law, Charlottesville, Virginia. I was a commentator on a talk offered by Professor David Strauss of the University of Chicago but I have been unable to determine the specific nature of his talk. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 18 – 19, 2017: Speaker, American Mock Trial Association, Orlando, Florida. I made brief remarks on behalf of the American Mock Trial Association

at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

November 12 – 13, 2016: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

October 22, 2016: Moot Court Judge, University of Virginia School of Law, Charlottesville, Virginia. I was a judge for a moot court competition. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

August 19, 2016: Speaker, "Overview of the American Legal System and the Life of a Case," Introduction to Law School for First-Year Law Students, University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?v=FD2c6vAw4KI. My remarks begin at 54:11.

August 2016 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

April 11, 2016: Panelist, "'Exam 2.0' Testing Tips from Professors Kimberly Kesler Ferzan and Toby Heytens," University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?app=desktop&v=8f9istajMSg&t=1743s.

March 19 – 20, 2016: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening ceremony of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

February 20 – 21, 2016: Speaker, American Mock Trial Association, New Haven, Connecticut. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges

throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

February 1, 2016: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a presentation about exam-taking techniques sponsored by the Black Law Students Association. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

January 19, 2016: Panelist, Directors of Diversity and Inclusion Training at the College of Arts of Sciences at the University of Virginia, Charlottesville, Virginia. I have no notes, transcript, or recording. The address for the University of Virginia is 248 McCormick Road, Charlottesville, Virginia 22904.

November 23, 2015: Commenter, "Judicial Duty and the Supreme Court's Cult of Celebrity," sponsored by the student chapter of the Federalist Society for Law and Public Policy at the University of Virginia School of Law, Charlottesville, Virginia. Audio available at https://soundcloud.com/uva-law/judicial-duty-and-the-supreme-courts-cult-of-celebrity.

November 21 – 22, 2015: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording, but press coverage is supplied. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 16, 2015: Panelist, "UVA Law Professors Discuss Exam Strategies," University of Virginia School of Law, Charlottesville, Virginia. Recording available at https://www.youtube.com/watch?v=HtFoZI71Y6w. My remarks begin at 5:13.

November 11, 2015: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a presentation about exam-taking techniques sponsored by the Black Law Students Association. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

September 11, 2015: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Notes supplied.

August 2015 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I

have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

March 14 – 15, 2015: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

February 14 – 15, 2015: Speaker, American Mock Trial Association, Richmond, Virginia. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

2015 [month and date unknown]: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a presentation about exam-taking sponsored by the Office of the Dean of Students. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

2015 [month and date unknown]: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a talk on appellate oral advocacy to law students at the University of Virginia School of Law. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

November 1 – 2, 2014: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

October 1, 2014: Commenter, "Nicholas Quinn Rosenkranz's 'The Subjects of the Constitution,'" Federalist Society for Law and Public Policy, University of Virginia School of Law chapter, Charlottesville, Virginia. Notes supplied.

August 2014 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I

have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

April 24, 2014: Speaker, Stanford Law Review, Palo Alto, California. I spoke to Stanford Law School students about my article *Reassignment*. I have no notes, transcript, or recording. The address for the Stanford Law Review is Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

March 22 – 23, 2014: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

January 31 – February 2, 2014: Speaker, American Mock Trial Association, Manchester, New Hampshire. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

November 2 – 3, 2013: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

September 20, 2013: Speaker, "Justice Sandra Day O'Connor's Out of Order: Stories from the History of the Supreme Court," Northside Library, Charlottesville, Virginia. Notes supplied.

August 2013 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

April 12, 2013: Speaker, Video Introduction of Justice Elena Kagan, American Mock Trial Association, National Championship Tournament, Washington, District of Columbia. Recording supplied.

March 22, 2013: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Notes supplied.

February 21 or 22, 2013: Speaker, University of Washington School of Law, Seattle, Washington. I gave a talk about the research that became my article *Reassignment*. I have no notes, transcript, or recording. The address for the University of Washington School of Law is 4293 Memorial Way, Northeast, Seattle, Washington 98195.

November 3 – 4, 2012: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

October 8, 2012: Speaker, University of Minnesota Law School, Minneapolis, Minnesota. I gave a talk about the research that became my article *Reassignment*. I have no notes, transcript, or recording. The address for the University of Minnesota Law School is 2219 Nineteenth Avenue, South, Minneapolis, Minnesota 55455.

September 26, 2012: Moot Court Judge, University of Virginia School of Law, Charlottesville, Virginia. I was a judge for a moot court competition. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

August 2012 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

July 26, 2012: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a talk to law students about the research that became my article *Reassignment*. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

March 17 – 18, 2012: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

February 10 – 12, 2012: Speaker, American Mock Trial Association, Superior, Wisconsin. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

November 5 – 6, 2011: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

September 14, 2011: Panelist, University of Virginia School of Law, Supreme Court Roundup, Charlottesville, Virginia. Recording supplied.

August 2011 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

March 19 – 20, 2011: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

February 15, 2011: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I spoke to a group of law students about appellate oral advocacy. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 5 – 6, 2011: Speaker, American Mock Trial Association, Chapel Hill, North Carolina. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

November 6 – 7, 2010: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

September 20, 2010: Speaker, Farmington Country Club, Charlottesville, Virginia. I spoke to an informal "Breakfast Club" about the work of the Office of the Solicitor General in the United States Department of Justice. I have no notes, transcript, or recording. The address for Farmington Country Club is 1625 Country Club Circle, Charlottesville, Virginia 22901.

August 2010 [date unknown]: Speaker, Collegiate Mock Trial at the University of Virginia, Charlottesville, Virginia. I believe I made brief remarks at an information session hosted by the undergraduate mock trial team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

February 26 – 28, 2010: Speaker, American Mock Trial Association, Jamaica, New York. I made brief remarks on behalf of the American Mock Trial Association at the opening and closing ceremonies of an undergraduate mock trial competition and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

November 21 – 22, 2009: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

June 22, 2009: Speaker, Congressional Youth Leadership Conference, Washington, District of Columbia. I spoke to a group of students attending a law-related leadership conference; I do not recall the topic. I have no notes, transcript, or recording. The address for Envision (the organization that appears to have run the conference) is 1919 Gallows Road, Suite 700, Vienna, Virginia 22182.

February 14 – 15, 2009: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for

Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 1 – 2, 2008: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

July 3, 2008: Speaker, LeadAmerica, Washington, District of Columbia. I spoke to a group of middle and high school students attending a Law & Trial Advocacy Program in Washington, DC sponsored by LeadAmerica. I have no notes, transcript, or recording. The address for LeadAmerica is 515 South Federal Highway, Suite 301, Boca Raton, Florida 33433.

February 23 – 24, 2008: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

November 3 – 4, 2007: Speaker, Collegiate Mock Trial at the University of Virginia, Washington, District of Columbia. I made brief remarks at the opening and closing ceremonies of an undergraduate mock trial competition hosted by the team that I coach and also conducted orientation sessions for volunteer judges throughout the weekend. I have no notes, transcript, or recording. The address for Collegiate Mock Trial at the University of Virginia is 580 Massie Road, Charlottesville, Virginia 22903.

September 28, 2007: Breakout Session Leader, 2007 Summit for Appellate Judges, Lawyers & Staff Attorneys, Appellate Judges Education Institute, Washington, District of Columbia. I led a breakout session titled "Section 1983 Actions: An Overview, Plus Qualified Immunity, Hot Pursuit, and 'Bong Hits 4 Jesus'" presented by the Appellate Judges Education Institute. I have no notes, transcript, or recording. The address for the Appellate Judges Education Institute is SMU Dedman School of Law, P.O. Box 750112, Dallas, Texas 75275.

February 2007 [date unknown]: Speaker, University of Virginia School of Law, Charlottesville, Virginia. Notes supplied.

December 2006 [date unknown]: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I gave a presentation about exam-taking techniques sponsored by the Black Law Students Association. I have no notes, transcript, or

recording, but press coverage is supplied. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

2006 [month and date unknown]: Moot Court Judge, University of Virginia School of Law, Charlottesville, Virginia. I was a judge for a moot court competition. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

2006 [month and date unknown]: Speaker, Washington & Lee Law School, Lexington, Virginia. I presented the research that became my article *Doctrine Formulation and Distrust* at the Virginia Junior Faculty Forum. I have no notes, transcript, or recording. The address for Washington & Lee Law School is 204 West Washington Street, Lexington, Virginia 24450.

January 23, 2006: Speaker, University of Illinois College of Law, Champaign, Illinois. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Illinois College of Law is 504 East Pennsylvania Avenue, Champaign, Illinois 61820.

January 19, 2006: Speaker, George Washington University Law School, Washington, District of Columbia. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for George Washington University Law School is 2000 H Street, Northwest, Washington, District of Columbia 20052.

January 13, 2006: Speaker, William & Mary Law School, Williamsburg, Virginia. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

January 12, 2006: Speaker, University of Virginia School of Law, Charlottesville, Virginia. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

December 5, 2005: Speaker, University of Washington School of Law, Seattle, Washington. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Washington School of Law is 4293 Memorial Way, Northeast, Seattle, Washington 98195.

December 2, 2005: Speaker, University of Arizona James E. Rogers College of Law, Tucson, Arizona. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Arizona James E. Rogers College of Law is 1201 East Speedway Boulevard, Tucson, Arizona 85721.

November 28, 2005: Speaker, University of Minnesota Law School, Minneapolis, Minnesota. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Minnesota Law School is 229 Nineteenth Avenue South, Minneapolis, Minnesota 55455.

November 17, 2005: Speaker, University of Maryland School of Law, Baltimore, Maryland. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for the University of Maryland School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

2005 [month and date unknown]: Speaker, Cornell Law School, Ithaca, New York. I presented the research that became my article *Managing Transitional Moments in Criminal Cases*. I have no notes, transcript, or recording. The address for Cornell Law School is Myron Taylor Hall, Ithaca, New York 14853.

April 2005 [date unknown]: Moderator, "The Constitutionality of the Solomon Amendment," Cornell Law School, Ithaca, New York. I moderated a panel about pending legal challenges to the Solomon Amendment. Notes supplied.

February 28, 2005: Panelist, Cornell Law School, Ithaca, New York. I do not recall the title of the panel. Notes supplied.

April 2003 [date unknown]: Speaker, American Mock Trial Association, Des Moines, Iowa. I gave brief remarks as one of two guests of honor at the American Mock Trial Association's National Championship Tournament. I have no notes, transcript, or recording. The address for the American Mock Trial Association is Webster Hall, Suite 212, 3950 East Newman Road, Joplin, Missouri 64801.

May 25, 1997: Graduation Speaker, Macalester College, St. Paul, Minnesota. I was one of several graduates who participated in offering the Prayer for Peace at Macalester College's undergraduate graduation ceremony. I have no notes, transcript, or recording. The address for Macalester College is 1600 Grand Avenue, St. Paul, Minnesota 55105.

February 8, 1994: Speaker at Public Forum, Macalester College, St. Paul, Minnesota. I made brief remarks at a public forum discussing changes to the academic calendar at my college. I have no notes, transcript, or recording, but

press coverage is supplied. The address for Macalester College is 1600 Grand Avenue, St. Paul, Minnesota 55105.

During the fall of 1994, I hosted a weekly two-hour radio show for my college radio station. I have no notes, transcript, or recording. The address for Macalester College is 1600 Grand Avenue, St. Paul, Minnesota 55105.

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

I have not maintained a record of all interviews I have given, but I have searched my own records and Internet sources to provide as complete of a list as possible. Nonetheless, there may be interviews that I did not recall or locate.

Mike Fox, *3 Alumni To Be Honored for Public Service*, UVA Law News Release (Feb. 16, 2021). Copy supplied.

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Herbert Bauernebel, *Mourning for Ruth Bader Ginsburg, worrying about the future*, Bild (Sept. 24, 2020). Copy supplied.

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Shelley Nelson, *Superior native serves as Virginia Solicitor General*, Superior Telegram (Jan. 16, 2018). Copy supplied.

Mary Wood, *Alumnus and Law Professor Named Virginia's New Solicitor General*, UVA Today (Jan. 10, 2018). Copy supplied (reprinted in multiple outlets).

Eric Williamson, *Clinic Headed to Supreme Court Again With City of Hays v. Vogt*, UVA Law News Release (Sept. 28, 2017). Copy supplied.

Mary Wood, *UVA Undergrad Mock Trial Team Captures National Title*, UVA Today (May 2, 2017). Copy supplied (reprinted in multiple outlets).

Derez Quizon, *Sweet revenge for mock trial team, which captures third national title*, The Daily Progress (May 1, 2017). Copy supplied.

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Law Students of the Year: Danielle Desaulniers, University of Virginia School of Law, Nat'l Jurist (Mar. 8, 2017). Copy supplied.

Eric Williamson, *'Meticulous' Legal Mind Earns Professor Toby Heytens All-University Teaching Award*, UVA Law News Release (Apr. 21, 2016). Copy supplied.

Senate Republican leader: No lame-duck hearing of court pick, Univ. Wire (Mar. 23, 2016). Copy supplied.

Alexis Gravely, *Law profs. weigh in on Obama Supreme Court nomination*, The Cavalier Daily (Mar. 21, 2016). Copy supplied.

Dean Seal, *Three Supreme Court clerkships keep Virginia Law pipeline strong*, The Daily Progress (Mar. 12, 2016). Copy supplied.

Inside the Classroom: 6 questions with Professor Toby Heytens (approximately 2016, month and date unknown). Copy supplied.

Eric Williamson, *Professor Toby Heytens Recognized by The Green Bag for Long-Form Legal Article*, UVA Law News Release (Apr. 30, 2015). Copy supplied.

The Case for Competition, 2015 University of Virginia Giving Societies Annual Report. Copy supplied.

Faculty Q&A: Toby Heytens on the Practice of Judicial 'Reassignment,' UVA Today (Mar. 19, 2014). Copy supplied (reprinted in multiple outlets).

Joe Forward, *Mock Trial. Real Leaders.*, Wisconsin Lawyer (Dec. 1, 2013). Copy supplied.

Nadya Labi, *Ahead of the Curve*, NYU L. Mag. (Sept. 5, 2013). Copy supplied.

Brian McNeill, *UVA Law Professor Takes Students Inside Office of Solicitor General*, UVA Law News Release (Jan. 17, 2013). Copy supplied.

Sharon Driscoll, *Meet Liz Magill*, Stanford Lawyer (Nov. 12, 2012). Copy supplied.

Professor roulette, Virginia Law Weekly (Oct. 5, 2012). Copy supplied.

Matt Kelly, *U. Va. Undergraduate Reedy Swanson Earns Carnegie Fellowship*, UVA Today (Apr. 2, 2012). Copy supplied (reprinted in multiple outlets).

Chris Dumond, *Supreme Court ruling has implications for Lynchburg-area GPS Case*, The News & Advance (Feb. 5, 2012). Copy supplied.

Tasha Kates, *Supreme Court issues opinions in UVa teacher argued cases*, The Daily Progress (July 3, 2011). Copy supplied.

University of Virginia Student Ben Wallace Selected as Truman Scholar, Univ. of Va. News Release (Mar. 31, 2011). Copy supplied.

Heytens Returns from Office of the Solicitor General, Va. L. Weekly (Sept. 10, 2010). Copy supplied.

U. Va. News Staff, *Law Professor Returns to Classroom from Solicitor General's Office*, UVA Today (Aug. 27, 2010). Copy supplied (reprinted in multiple outlets).

Denise Forster & Emily Williams, *From the Courtroom to the Classroom Past and Present Litigators Inspire Next Generation*, UVA Lawyer (Fall 2007). Copy supplied.

Mary Wood, *University of Virginia Law Professor to Work for Solicitor General*, UVA Today (July 19, 2007). Copy supplied (reprinted in multiple outlets).

Law Weekly Staff, *Law Students Coach Undergraduate Trial Team to Victory*, Va. L. Weekly (May 2, 2007). Copy supplied.

Lindsay Nair, *Standoff Leads to Federal Charges*, The Roanoke Times (July 14, 2006). Copy supplied.

Emily Williams, *Homecoming for New Faculty Hire Toby Heytens*, UVA Law News Release (June 26, 2006). Copy supplied.

Darcey Rhoades, *Clerking for the Supreme Court*, Virginia Law Weekly (Feb. 7, 2003). Copy supplied.

Amy Collins, *The Ultimate Legal Job*, Virginia Law Weekly (Feb. 2, 2001). Copy supplied.

Rich Bland & Erica Bachman, *Booming Barrister's Breaks Barriers*, Virginia Law Weekly (Feb. 11, 2000). Copy supplied.

Law Weekly Staff, *Legal Briefs: Heytens Wins Inaugural Prize for Highest First-Year GPA*, Virginia Law Weekly (Oct. 2, 1998). Copy supplied.

Kristina Dell, *How to Afford A Public Service Career*, Virginia Law Weekly (Sept. 17, 1997). Copy supplied.

Kate Wood, *Mock Trial teams place among the top ten in the nation*, The Mac Weekly (Apr. 10, 1997). Copy supplied.

George Ramsden, *Graduation speaker policies redesigned*, The Mac Weekly (Feb. 13, 1997). Copy supplied.

Carolyn Griffith, *Media-Wise*, Macalester Today (Feb. 1997). Copy supplied.

Bill Kinney, *Security aims to stop Grand Ave. snowball fight*, The Mac Weekly (Nov. 14, 1996). Copy supplied.

Steve Litner, *If America were a car, then Toby would be a Hovercraft.*, The Mac Weekly (Oct. 17, 1996). Copy supplied.

Janet Piehl, *History exodus continues*, The Mac Weekly (Apr. 11, 1996). Copy supplied.

Ryan Greenwood, *Macalester Mock trial team places second in nation*, The Mac Weekly (Apr. 4, 1996). Copy supplied.

Dave McGinnis, *Mock Trial Team Places 14th in Nationals*, The Mac Weekly (Apr. 13, 1995). Copy supplied.

Mock Trial: Real Achievement, Macalester Today (Aug. 1994). Copy supplied.

Anne Bretts, *Superior Central to reopen: School repairs finished early*, Duluth News-Tribune (month and date unknown, 1990). 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 cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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 of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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 February 22, 2018, I was appointed Solicitor General of Virginia by Virginia Attorney General Mark R. Herring. I have never run for elective office or been nominated for another appointed office. I have never held a position with a national, state, or local political party organization.

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

I have not held office or a title in a political party or election committee. In 2016, I made phone calls as an unpaid volunteer for the Hillary Clinton for President campaign. In 2017, I was an unpaid volunteer for Virginia Delegate David Toscano in his re-election campaign; I distributed literature, staffed a desk at an event, and made phone calls. In 2017, my spouse and I hosted a fundraiser for Virginia Attorney General Mark R. Herring. In 2020, I made phone calls as an unpaid volunteer for the Democratic Party of Wisconsin and sent text messages on behalf of the Joe Biden for President campaign.

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

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

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

From 2000 to 2001, I served as a law clerk to the Honorable Edward R. Becker, Circuit Judge of the United States Court of Appeals for the Third Circuit.

From 2002 to 2003, I served as a law clerk to the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States.

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

I have never practiced law alone.

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

2000
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Summer Associate

2001 – 2002
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Bristow Fellow

2003 – 2006
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, District of Columbia 2006
Counsel (2005 – 2006)
Associate (2003 – 2004)

2007 – 2010
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Assistant to the Solicitor General

2014
Hogan Lovells US LLP
555 Thirteenth Street, Northwest
Washington, District of Columbia 20004
Contractor (March 2014)

2018 – present
Office of the Virginia Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Solicitor General (2018 – present)
Appellate Practice Transition Counsel (2018)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

The overwhelming majority of my practice has consisted of two elements: appellate litigation across a wide variety of subjects (including civil and criminal matters) and trial court litigation involving constitutional issues. During my two tenures at the Office of the Solicitor General of the United States, the vast majority of my work involved litigation before the Supreme Court of the United States, and the same is true of my work with the University of Virginia School of Law's Supreme Court Litigation Clinic. During my time in private practice at O'Melveny & Myers, my

practice focused on appellate litigation before both the Supreme Court of the United States and United States Courts of Appeals. My work with the Office of the Virginia Attorney General has had the broadest scope of my career to date and has included substantial responsibility for litigation before the Supreme Court of the United States, the United States Court of Appeals for the Fourth Circuit, the Supreme Court of Virginia, and state and federal trial courts throughout Virginia.

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

Until beginning my current position as Solicitor General of Virginia, my practice had focused heavily on appellate litigation before federal courts. As Solicitor General of Virginia, I have also litigated numerous cases in federal trial courts and state trial and appellate courts.

During my time at O'Melveny & Myers, I represented a wide variety of clients, including criminal defendants, telecommunications firms, energy companies, the owners of a shopping mall, a model train company, and a group of law professors.

During my time at the Department of Justice, I exclusively represented the federal government, its officers, and its agencies in both criminal and civil litigation.

During my work with the University of Virginia's Supreme Court Litigation Clinic, I almost exclusively represented individuals, although I also did one case on behalf of a municipality.

At the Office of the Virginia Attorney General, I exclusively represent the Commonwealth, its officers, and its agencies in state and federal courts.

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

The overwhelming majority of my practice has been in litigation, including work before the Supreme Court of the United States, the United States Court of Appeals for the Fourth Circuit, the Supreme Court of Virginia, and state and federal trial courts throughout Virginia. I have appeared in court with some frequency since 2007 and with even greater frequency since becoming Solicitor General of Virginia in early 2018.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 35%

3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
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 two cases to final decision in courts of record, and I was chief counsel in both cases. I have made numerous appearances in federal and state trial courts in connection with motions to dismiss, for summary judgment, for temporary or permanent injunctive relief, and for attorney's fees.

i. What percentage of these trials were:
1. jury: 0%
2. non-jury: 100%

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

While in the United States Solicitor General's Office, the principal focus of my practice was before the Supreme Court of the United States. I have also been involved in briefing and argument before the U.S. Supreme Court while with the Office of the Virginia Attorney General, the University of Virginia School of Law, and in private practice.

Argued cases

Mathena v. Malvo, 140 S. Ct. 919 (2020) (transcript, 2019 WL 5212705; reply brief for petitioner, 2019 WL 4640387; brief for petitioner, 2019 WL 2500424; reply brief in support of certiorari, 2018 WL 5729896; petition for a writ of certiorari, 2018 WL 3993386).

Virginia House of Delegates v. Bethune-Hill, 139 S. Ct. 1945 (2019) (transcript, 2019 WL 1244167; brief of state appellees, 2019 WL 410765; state appellees' motion to dismiss, 2019 WL 1501527; response in opposition to emergency application for stay, 2018 WL 6839783).

Virginia Uranium, Inc. v. Warren, 139 S. Ct. 1894 (2019) (transcript, 2018 WL 8581777; brief for respondents, 2018 WL 4105540; supplemental brief for respondents, 2018 WL 1961021).

City of Hays v. Vogt, 135 S. Ct. 55 (2017) (transcript, 2018 WL 1368609; reply brief for petitioner, 2018 WL 366945; brief for petitioner, 2017 WL 5495450; reply brief in support of certiorari, 2017 WL 3635416; petition for a writ of certiorari, 2017 WL 2610082).

Dolan v. United States, 560 U.S. 605 (2010) (transcript, 2010 WL 1557649; I was not involved in the briefing of this case).

Maryland v. Shatzer, 559 U.S. 98 (2010) (transcript, 2009 WL 3169420; brief for the United States as amicus curiae, 2009 WL 1069335).

United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010) (transcript, 2009 WL 4276899; brief for the United States as amicus curiae, 2009 WL 2861542).

Arizona v. Johnson, 555 U.S. 323 (2009) (transcript, 2008 WL 5151621; brief for the United States as amicus curiae, 2008 WL 4125497).

Flores-Figueroa v. United States, 556 U.S. 646 (2009) (transcript, 2009 WL 462661; brief for the United States, 2009 WL 191837).

Federal Express Corporation v. Holowecki, 552 U.S. 389 (2008) (transcript, 2007 WL 3265513; brief for the United States as amicus curiae, 2007 WL 2808461).

Briefed cases

Watson v. Virginia, No. 20-7339 (2021) (brief in opposition, https://www.supremecourt.gov/DocketPDF/20/20-7339/181342/20210610120150597_2921%2006%2010%20Brief%20in%20Opposition%20Watson%20v%20Comm.pdf).

Wolfe v. Clarke, No. 20-1056 (2021) (brief in opposition, 2021 WL 2035207) (cert. denied).

Cedar Point Nursery v. Hassid, No. 20-107, 2021 WL 2557070 (U.S. June 23, 2021) (brief of amici curiae Virginia et al., 2021 WL 679091).

Trump v. Vance, 140 S. Ct. 2412 (2020) (brief of amici curiae Virginia et al., 2020 WL 1434010).

Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049 (2020) (brief of amici curiae Virginia et al., 2020 WL 1478592).

United States Forest Service v. Cowpasture River Preservation Association, 140 S. Ct. 1837 (2020) (brief amicus curiae of Virginia, 2020 WL 430685).

Atlantic Richfield Company v. Christian, 140 S. Ct. 1335 (2020) (brief of amici curiae Virginia et al., 2019 WL 6524884).

Tolle v. Northam, No. 19-1283 (brief in opposition, 2020 WL 4369689) (cert. denied).

Merck Sharp & Dohme Corp. v. Albrecht, 139 S. Ct. 1668 (2019) (brief of amici curiae Virginia et al., 2018 WL 6191465).

Culbertson v. Berryhill, 139 S. Ct. 517 (2019) (petition for a writ of certiorari, 2017 WL 5714628).

Kansas v. Boettger, No. 19-1051 (brief of amici curiae Virginia et al., 2020 WL 1479883) (cert. denied).

Johnson v. Kiser, No. 19-891 (brief in opposition, 2020 WL 2083620) (cert. denied).

Passaro v. Virginia, No. 19-565 (brief in opposition, 2019 WL 6770509) (cert. denied).

Jordan v. Virginia Department of Corrections, No. 19-235 (brief in opposition, 2019 WL 5959535) (cert. denied).

Spencer v. Virginia State University, No. 19-30 (brief in opposition, 2019 WL 4235522) (cert. denied).

Epic Systems Corporation v. Lewis, 138 S. Ct. 1612 (2018) (brief for respondent, 2017 WL 3475520; brief in opposition, 2016 WL 6873250).

Jesner v. Arab Bank, PLC, 138 S. Ct. 1386 (2018) (brief of admiralty law professors as amici curiae, 2017 WL 2729478).

Montana v. Tipton, No. 18-444 (brief of amici curiae Virginia et al., 2018 WL 5978079) (cert. denied).

Patterson v. Clarke, No. 18-265 (brief in opposition, 2018 WL 6819448) (cert. denied).

Wolfe v. Virginia, No. 18-227 (brief in opposition, 2018 WL 6012696) (vacated and remanded for further consideration in light of *Class v. United States*, 138 S. Ct. 798 (2018)).

Rountree v. Clarke, No. 17-7425 (brief in opposition, copy supplied) (cert. denied).

Pioneer Centres Holding Company Stock Ownership Plan v. Alerus Financial, N.A., No. 17-667 (petition for a writ of certiorari, 2017 WL 5171490) (petition dismissed).

Glisson v. D.O., No. 17-17 (petition for a writ of certiorari, 2017 WL 2839360) (cert. denied).

Ramirez v. T&H Lemont, Incorporated, No. 16-1418 (reply brief in support of certiorari, 2017 WL 3614402; petition for a writ of certiorari, 2017 WL 2351110) (cert. denied).

Magee v. Coca-Cola Refreshments USA, Incorporated, No. 16-668 (supplemental brief for petitioner, 2017 WL 3381702; reply brief in support of certiorari, 2017 WL 491203; petition for a writ of certiorari, 2016 WL 6873260) (cert. denied).

Iowa v. Marshall, No. 16-435 (brief in opposition, 2016 WL 7406721) (cert. denied).

Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (brief for the American Jewish Committee et al. as amici curiae, 2014 WL 7794002).

Elonis v. United States, 575 U.S. 723 (2015) (reply brief for petitioner, 2014 WL 5488911).

Henderson v. United States, 575 U.S. 622 (2015) (reply brief for petitioner, 2015 WL 673667; brief for petitioner, 2014 WL 6984130; reply brief in support of certiorari, 2014 WL 4467726; petition for a writ of certiorari, 2012 WL 2394018).

Cowser-Griffin v. Griffin, No. 14-1531 (supplemental brief for petitioner, 2015 WL 4638584; reply brief in support of certiorari, 2015 WL 7758575; petition for a writ of certiorari, 2015 WL 3918905) (cert. denied).

Schultz v. Wescom, No. 14-59 (brief in opposition, 2014 WL 5767974) (cert. denied).

Bureau of Duryea, Pennsylvania v. Guarnieri, 564 U.S. 379 (2011) (reply brief for petitioners, 2011 WL 639365).

Nevada Commission on Ethics v. Carrigan, 564 U.S. 117 (2011) (reply brief for petitioner, 2011 WL 1476234; brief for petitioner, 2011 WL 661711).

Fox v. Vice, 563 U.S. 826 (2011) (brief for respondents, 2011 WL 303895).

United States v. Marcus, 560 U.S. 258 (2010) (petition for a writ of certiorari, 2009 WL 1179321).

Heydt-Benjamin v. Hedyt-Benjamin, No. 10-1303 (brief of Professors Linda D. Eldrod and Robert G. Spencer as amici curiae, 2011 WL 2002215) (cert. denied).

Barr v. United States, No. 10-794 (reply brief in support of certiorari, 2011 WL 757936) (cert. denied).

Alabama v. North Carolina, 560 U.S. 330 (2010) (brief for the United States as amicus curiae, copy supplied).

Corley v. United States, 556 U.S. 303 (2009) (brief for the United States, 2008 WL 5266415).

Pleasant Grove City v. SUMMUM, 555 U.S. 460 (2009) (brief for the United States as amicus curiae, 2008 WL 2521267).

Herring v. United States, 555 U.S. 135 (2009) (brief for the United States, 2008 WL 2847070).

Chamber of Commerce of the United States of America v. Candelaria, No. 09-115 (brief for the United States as amicus curiae, 2010 WL 2190418) (cert. denied).

Dada v. Mukasey, 554 U.S. 1 (2008) (brief for respondent, 2007 WL 4254417).

United States v. Ressam, 553 U.S. 272 (2008) (brief for the United States, 2008 WL 189554; petition for a writ of certiorari, 2007 WL 2898699).

United States v. Villanueva-Sotelo, No. 08-662 (petition for a writ of certiorari, 2008 WL 4843624) (cert. denied).

Patton v. Harris, No. 08-7683 (brief for the United States as amicus curiae, copy supplied) (cert. denied).

Cable News Network, Inc. v. CSC Holdings, Inc., No. 08-448 (brief for the United States as amicus curiae, 2009 WL 1511740) (cert. denied).

Bell Atlantic Corporation v. Twombly, 550 U.S. 544 (2007) (brief of Mastercard International Inc. and Visa U.S.A. Inc. as amici curiae, 2006 WL 901171).

PT Pertamina v. Karaka Bodas Company, L.L.C., No. 07-619 (brief for the United States as amicus curiae, 2008 WL 2185729) (cert. denied).

Goss International Corporation v. Tokyo Kikai Seisakusho, No. 07-618 (brief for the United States as amicus curiae, 2008 WL 2185728) (cert. denied).

Rumsfeld v. Forum for Academic and Institutional Rights, 547 U.S. 47 (2006) (brief of Professors William Alford et al. as amici curiae, 2005 WL 2367595).

My name also appears on the following briefs drafted by other state attorneys general offices:

California v. Texas, No. 19-840, 2021 WL 2459255 (U.S. June 17, 2021) (brief for petitioners, 2020 WL 2475940; reply brief in support of certiorari, 2020 WL 730290; petition for a writ of certiorari, 2020 WL 58603).

Little Sisters of the Poor v. California, 18-1192 (brief for state respondents in opposition, 2019 WL 2176281) (cert. denied.).

During my two stints at the Department of Justice, I also worked on a variety of other U.S. Supreme Court filings on which my name did not appear, including briefs in opposition to petitions for writs of certiorari and responses to applications for stays pending appeal.

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. *Gregory v. Northam*, Case No. CL 20-2441 (Richmond Cir. Ct. Aug. 6, 2020) (Cavedo & Marchant, J.), *petition for review granted*, Record No. 210113 (Va. S. Ct.) (Lemons, C.J. & Goodwyn, Mims, Powell, Kelsey, McCullough & Chafin, JJ.); *Taylor v. Northam*, Case No. CL20003339-00 (Richmond Cir. Ct. Oct. 27, 2020) (Marchant, J.), *petition for review granted*, Record No. 201307 (Va. S. Ct.) (Lemons, C.J. & Goodwyn, Mims, Powell, Kelsey, McCullough & Chafin, JJ.).

    In June 2020, Virginia Governor Ralph S. Northam announced that a large statue of Robert E. Lee would be removed from its longstanding location on Richmond's Monument Avenue. Multiple lawsuits were filed seeking to prevent the Governor's

actions. I served as lead counsel on the team that defended the Governor's actions in the circuit court and on appeal, and I personally argued in support of motions to dismiss and in opposition to requests for preliminary injunctive relief in both cases. After a trial, the circuit court determined that the plaintiff in one of the cases (*Gregory*) lacked a private right of action. A full-day trial was held in the other case (*Taylor*) in October 2020, where I argued the motion for summary judgment, the motion to strike, and the renewed motion to strike. On October 27, 2020, the circuit court ruled in the Governor's favor, concluding that any covenants purporting to require the statue to remain up indefinitely are void as against public policy. The Supreme Court of Virginia granted a petition for review in both cases, which were argued on June 8, 2021, and remain pending.

Co-Counsel
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Jessica Merry Samuels
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Richmond, VA 23219
(804) 786-7240

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Joseph E. Blackburn, Jr.
Blackburn, Conte, Schilling & Click, P.C.
300 West Main Street
Richmond, VA 23220
(804) 782-1111

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Patrick M. McSweeney
3358 John Tree Hill Road
Powhatan, VA 23139
(804) 937-0895

2. *NC Financial Solutions of Utah, LLC v. Commonwealth of Virginia ex rel. Mark R. Herring, Attorney General*, 299 Va. 452 (2021) (Lemons, C.J. & Goodwyn, Mims, Powell, Kelsey, McCullough & Chafin, JJ.).

An unlicensed internet lender made loans to thousands of Virginia consumers that charged interest rates exceeding those permitted by Virginia law. The Attorney General brought a public enforcement action, and the lender moved to dismiss the claims seeking restitution, arguing both that the Attorney General was not authorized to seek restitution under the Virginia Consumer Protection Act and that such relief was precluded by arbitration agreements signed by the lender's customers. After the Supreme Court of Virginia granted review in 2020, I led the team that briefed the case and personally presented argument on behalf of the Attorney General. In 2021, the Supreme Court of Virginia agreed with our position by a vote of 7-0.

Co-Counsel
Mark R. Herring
Michelle S. Kallen
Office of the Virginia Attorney General
202 North Ninth Street
Richmond, VA 23219
(804) 786-7240

Opposing counsel
Charles K. Seyfarth
Elizabeth Scott Turner
O'Hagan Meyer
411 East Franklin, Suite 500
Richmond, VA 23219
(804) 403-7100

3. *Hall v. Northam*, Case No. CL 2000632-00 (Culpeper Cir. Ct. Apr. 30, 2020) (Worrell, J.), *petition for review refused*, Record No. 200582 (Va. S. Ct. May 19, 2020) (Goodwyn, Mims & Powell, JJ.).

In 2020, the owners of several Gold's Gym franchises challenged the legality of various executive orders issued by the Governor of Virginia to combat the COVID-19 pandemic. I led the team that successfully opposed the plaintiffs' request for a temporary injunction in state trial court and then successfully defended that ruling on appeal to the Supreme Court of Virginia, overseeing the briefing at both stages and personally presenting oral argument before the state trial court. (The Supreme Court of Virginia did not hear oral argument in this case.)

Co-Counsel
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Jessica Merry Samuels
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(804) 786-7240

Opposing Counsel
William M. Stanley
The Stanley Law Group
13508 Booker T. Washington Highway
Moneta, VA 24121
(540) 721-6028

Ryan T. McDougle
McDougle Law Firm, P.C.
11159 Air Park Road

Ashland, VA 23005
(804) 266-7211

4. *Mathena v. Malvo*, Case No. 18-217 (U.S.) (writ of certiorari dismissed pursuant to Supreme Court Rule 46, Feb. 26, 2020) (Roberts, C.J. & Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch & Kavanaugh, JJ.).

This case involved the younger of the two "DC snipers." After the court of appeals invalidated the defendant's life-without-parole sentences on Eighth Amendment grounds in 2018, I led the team that convinced the U.S. Supreme Court to grant certiorari and then briefed the case on the merits on behalf of the petitioner. I also presented oral argument on behalf of the petitioner in 2019. After the Virginia General Assembly enacted a new law that would permit the defendant to obtain resentencing, I conducted successful negotiations with opposing counsel that led to a voluntary dismissal of the case in 2020 without a ruling on the Eighth Amendment issues.

Co-Counsel
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Michelle S. Kallen
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202 North Ninth Street
Richmond, VA 23219
(804) 786-7240

Opposing Counsel
Danielle Spinelli
Wilmer Cutler Pickering Hale & Dorr LLP
1875 Pennsylvania Avenue, Northwest
Washington, DC 20006
(202) 663-6000

5. *Bethune-Hill v. Virginia State Board of Elections*, 326 F. Supp. 3d 128 (E.D. Va. 2018) (Allen, Keenan & Payne, JJ.), *appeal dismissed for lack of jurisdiction sub nom. Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019) (Roberts, C.J. & Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch & Kavanaugh, JJ.).

After a three-judge district court concluded that 11 state legislative districts were unconstitutional racial gerrymanders in 2018, the Attorney General of Virginia concluded that an appeal would not be in the best interests of the Commonwealth or its citizens. The leadership of a single house of the state legislature (which had intervened in the district court) attempted to delay the remedial phase and to appeal the district court's decision to the Supreme Court of the United States. I led the litigation team that successfully opposed the House's stay application before both the district court and the U.S. Supreme Court and then led the merits-stage briefing and personally presented oral argument on behalf of the Virginia State Board of Elections before the Supreme Court in 2019. The

Supreme Court agreed with our arguments that the legislative chamber lacked standing to appeal and dismissed the appeal for lack of subject-matter jurisdiction in 2019. I also participated in related proceedings regarding both a remedial plan and attorneys' fees before the district court in 2018 and 2019.

Co-Counsel
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Michelle S. Kallen
Office of the Virginia Attorney General
202 North Ninth Street
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(804) 786-2071

Counsel for Appellants (Opposing Counsel)
Paul D. Clement
Erin E. Murphy
Kirkland & Ellis LLP
655 15th Street, Northwest
Washington, DC 20005
(202) 879-5000

Counsel for Appellees
Marc E. Elias
Perkins Coie LLP
700 13th Street, Northwest, Suite 600
Washington, DC 20005
(202) 654-6200

6. *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894 (2019) (Roberts, C.J. & Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch & Kavanaugh, JJ.).

This case involved a preemption challenge to Virginia's longstanding moratorium on uranium mining. When I became Solicitor General of Virginia in 2018, the United States Court of Appeals for the Fourth Circuit had upheld the moratorium on a 2-1 vote, the mining company had filed a petition for a writ of certiorari, and the federal government had filed an amicus brief urging the U.S. Supreme Court to hear the case. After the Supreme Court granted review, I was the lead counsel on the merits brief and personally presented oral argument for the defendants in 2018. The Supreme Court agreed with our position in 2019, holding that federal law did not preempt Virginia's moratorium.

Co-Counsel
Mark R. Herring
Michelle S. Kallen
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202 North Ninth Street
Richmond, VA 23219

(804) 786-2071

Opposing Counsel
Charles J. Cooper
Michael W. Kirk
Jon D. Ohlendorf
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, Northwest
Washington, DC 20036
(202) 220-9600

7. *Corporate Executive Board Company v. Virginia Department of Taxation*, 297 Va. 57 (2019) (Lemons, C.J. & Goodwyn, Mims, McClanahan, Powell, Kelsey, & McCullough, JJ.).

In 2018, the Supreme Court of Virginia awarded an appeal to a corporation that challenged its Virginia income-tax assessment on the ground that it violated the Commerce and Due Process Clauses of the United States Constitution, as well as a state regulation. I led the team that briefed the case and personally presented argument before the Supreme Court of Virginia. In 2019, the court upheld the assessment by a vote of 7-0.

Co-Counsel
Mark R. Herring
Elizabeth Bushnell Myers
Office of the Virginia Attorney General
202 North Ninth Street
Richmond, VA 23219
(804) 786-9516

Opposing Counsel
Robert L. Willmore
Crowell & Moring
1001 Pennsylvania Avenue, Northwest
Washington, DC 20004
(202) 253-4430

8. *Evans v. Kuplinski*, 713 F. App'x 167 (4th Cir. 2017) (Cogburn, Duncan & Thacker, JJ.).

In 2017, I was appointed by the United States Court of Appeals for the Fourth Circuit to represent an indigent, mentally ill pretrial detainee who was challenging the dismissal of his civil rights complaint against various prison officials. I personally briefed and argued the case while a professor at the University of Virginia School of Law. The court of appeals accepted my client's argument that the case presented one of "the rare exceptional circumstances that rendered the district court's denial of [his] requests for counsel an abuse of discretion" and remanded for further proceedings.

Opposing Counsel
Jeffrey W. Rosen
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462
(757) 490-6253

9. *Federal Express Corporation v. Holowecki*, 552 U.S. 389 (2008) (Roberts, C.J. & Stevens, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer & Alito, JJ.)

The United States participated as amicus curiae supporting a private plaintiff's ability to proceed with her suit despite the fact that a federal agency (the Equal Employment Opportunity Commission) had not treated the employee's initial filing as a charge alleging unlawful discrimination. I drafted the United States' brief, subject to the supervision of the Acting Solicitor General, and presented oral argument on behalf of the United States in 2007. The Supreme Court agreed with our argument and permitted the employee's suit to proceed.

Co-Counsel
Gregory G. Garre (former Acting Solicitor General of the United States)
Latham & Watkins LLP
555 11th Street, Northwest
Washington, DC 20004
(202) 637-2207

Counsel for Petitioner
Connie Lewis Lensing (former Senior Vice President, Federal Express)
Bradley Arant Boult Cummings LLP
Roundabout Plaza
1600 Division Street, Suite 700
Nashville, TN 37203
(615) 252-6380

Counsel for Respondent
David L. Rose
Rose & Rose, P.C.
1290 19th Street, Northwest, Suite 601
Washington, DC 20036
(202) 331-8555

10. *Simons v. State*, 860 A.2d 416 (Md. Ct. Spec. App. 2004) (Davis, Eyler & Rodowsky, JJ.).

I was appointed in 2004 to represent an indigent criminal defendant in his appeal from a conviction for burglary and briefed and argued the case before the Maryland Court of

Special Appeals. The court ultimately held that, as a matter of first impression, a witness's pretrial statement to the police that the defendant was near the crime scene around the time of the crime was a "pre-trial identification" that had been improperly withheld from the defense. The court reversed the conviction and remanded for further proceedings.

Co-Counsel
Nancy S. Forster (formerly Public Defender for the State of Maryland)
Forster & LeCompte
210 Allegheny Avenue
Towson, MD 21204
(410) 685-6000

Opposing Counsel
Diane E. Keller (formerly of the Office of the Maryland Attorney General)
Office of the Maryland Attorney General
Saint Paul Plaza
200 St. Paul Place
Baltimore, MD 21202
(410) 576-6300

Ms. Keller appears to have retired; I am unable to locate contact information for her so have provided contact information for her former employer, the Office of the Maryland Attorney General.

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

During the Virginia General Assembly's 2020 session, I testified several times regarding the constitutionality of various pieces of proposed legislation. Throughout my tenure as Solicitor General of Virginia, I have provided legal advice to the Virginia Governor's office and various state agencies about a wide variety of legal matters. Since January 2020, I have provided frequent advice to the Virginia Governor's office about executive orders and other responses to the COVID-19 pandemic and other matters. Throughout my tenure as Solicitor General of Virginia, I have been heavily involved in the preparation of Attorney General opinions.

While at the Department of Justice, I advised the Solicitor General about whether to authorize the filing of appeals, petitions for writs of certiorari, or amicus briefs.

I have not performed any lobbying activities or registered as a lobbyist.

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

I taught Civil Procedure at the University of Virginia School of Law during the fall semesters of 2006, 2010, 2011, 2012, 2013, 2014, 2015, and 2017. The course covered basic principles of federal civil litigation. I did not use a traditional syllabus, but I have attached my course policies, a course outline document, and a list of reading assignments from the most recent time I taught the course, which reflect the course's coverage each time I have taught it.

I co-taught seminars titled Supreme Court: October Term at the University of Virginia School of Law during the following semesters: Spring 2014, Fall 2014, Fall 2015, Fall 2016, and Fall 2017. The seminars covered recent cases before the Supreme Court of the United States. Syllabi supplied.

Along with a colleague, I co-taught a Seminar in Ethical Values at the University of Virginia School of Law during the 2015 to 2016, 2016 to 2017, and 2017 to 2018 academic years. The seminars covered legal and ethical issues raised by the television series *Game of Thrones*. I have attached the most recent syllabus, which reflects the coverage of the course for all three years.

I co-taught the Supreme Court Litigation Clinic at the University of Virginia School of Law during the follow semesters: Spring 2011, academic years 2014 to 2015 and 2016 to 2017, and Fall 2017. The course placed students in teams to work on cases pending before the Supreme Court of the United States at the merits stage. The course did not have a syllabus.

I taught Remedies at the University of Virginia School of Law during the spring semester of 2016. The course covered basic principles of private and public law remedies. I did not use a traditional syllabus, but I have attached my course policies and a list of reading assignments, which reflect the coverage of the course.

I co-taught Current Issues in American Public Law at the University of Münster Faculty of Law during May 2014 as part of a regular faculty exchange program with the University of Virginia School of Law. The course provided a two-week introduction to the United States legal system. Syllabus supplied.

I taught Civil Rights Litigation at the University of Virginia School of Law during the spring semesters of 2007, 2011, 2012, 2013, and 2014. The course covered various statutes and doctrines that permit individuals to sue governments and government officials for alleged violations of their rights. I have attached my most recent syllabus, which reflects the course's coverage each time I have taught it.

I taught a short course titled Office of the Solicitor General at the University of Virginia School of Law during the January terms of 2013 and 2014. The course provided a brief overview of the work and role of the Office of the Solicitor General in the United States Department of Justice. I have attached my most recent syllabus, which reflects the course's coverage both times I taught it.

I taught Federal Courts at Cornell Law School during the spring semester of 2005. The course provided an introduction to various doctrines governing the work of Article III federal courts. I did not use a traditional syllabus, but I have attached a course outline and a list of reading assignments, which reflect the coverage of the course.

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

    I have no anticipated receipts, expected future benefits, or arrangements to be compensated in the future for any financial or business interest.

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

    If confirmed, I have no current plans, commitments, or agreements to pursue any outside employment during judicial service.

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

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

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

If confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

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

I would evaluate and resolve any potential conflicts of interest by applying the rules and standards set forth in 28 U.S.C. § 455 and the Code of Conduct for United States Judges. I would also consult relevant judicial decisions and opinions by the Judicial Conference of the United States.

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 times in government service, I have been prohibited from providing pro bono legal services, but I have continued to participate in non-legal community service by serving as an unpaid coach for the University of Virginia's undergraduate mock trial team and as an unpaid director of the American Mock Trial Association, the national organization that administers undergraduate trial advocacy competitions, for more than a decade. I also have participated in numerous events through the Virginia State Bar's Diversity Conference, including the Mentor-Mentee Initiative, the Oliver Hill/Samuel Tucker Pre-Law Institute, the Forum on Diversity and Inclusion in the Legal Profession, and the VSB Rule of Law Day.

While at the University of Virginia, I was appointed by the United States Court of Appeals of the Fourth Circuit to brief and argue a case on behalf of a pro se prisoner who alleged mistreatment by correctional staff. I also provided informal pro bono legal consultation to the Legal Aid Justice Center on several matters.

While at O'Melveny & Myers LLP, much of my practice was devoted to pro bono work. In particular, I was appointed by the Maryland Court of Special Appeals to brief and argue a case on behalf of an indigent criminal defendant. I also represented a number of amicus clients on a pro bono basis in various matters pending before the Supreme Court of the United States and other appellate courts.

26. **Selection Process**:

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

On March 3, 2021, Senators Mark Warner and Tim Kaine posted a joint announcement seeking applications to serve as a United States Circuit Judge for the Fourth Circuit. I submitted an application on March 5, 2021. I then interviewed with a committee appointed by the Senators on April 9, 2021, and with the Senators themselves on April 27, 2021. On May 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michael Stefan Nachmanoff

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

   United States District Judge for the Eastern District of Virginia

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

   Office
   Albert V. Bryan United States Courthouse
   401 Courthouse Square, Chambers 400
   Alexandria, Virginia 22314

   Residence
   Arlington, Virginia

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

   1968; Washington, District of Columbia

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.

   1992 – 1995, University of Virginia School of Law; J.D., 1995

   1987 – 1991, Wesleyan University; 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.

Employment:

2015 – present
United States District Court for the Eastern District of Virginia
401 Courthouse Square, Chambers 400
Alexandria, Virginia 22314
United States Magistrate Judge

2002 – 2015
Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, Virginia 22314
Federal Public Defender (2007 – 2015)
Acting Federal Public Defender (2005 – 2007)
First Assistant Federal Public Defender (2002 – 2005)

1996 – 2002
Cohen, Gettings & Dunham, P.C.
2200 Wilson Boulevard, Suite 800
Arlington, Virginia 22201
Partner (2000 – 2002)
Associate (1996 – 2000)

1995 – 1996
United States District Court for the Eastern District of Virginia
401 Courthouse Square, Chambers 700
Alexandria, Virginia 22314
Judicial Law Clerk to the Honorable Leonie M. Brinkema

1994 – 1995
Albemarle County Commonwealth's Attorney's Office
410 East High Street
Charlottesville, Virginia 22902
Third-Year Practitioner/Clinical Program (uncompensated; academic credit)

1994
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Tower, 2001 K Street, Northwest
Washington, District of Columbia 20006
Summer Associate

1993
United States Attorney's Office for the Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314
Summer Law Clerk (uncompensated)

1991 – 1992
Office of International Affairs, Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Paralegal Specialist

Other Affiliations (uncompensated):

2006 – 2016
Historical Society for the United States District Court for the Eastern District of Virginia
200 North Main Street
Suffolk, Virginia 23434
Board of Directors

2009 – 2012
Federal Bar Association, Criminal Law Section
1220 North Fillmore Street, Suite 444
Arlington, Virginia 22201
Secretary (approximately 2011 – 2012)

1996 – 2007
Federal Bar Association, Northern Virginia Chapter
Attention: Robert Vieth, President
8270 Greensboro Drive, Suite 700
Tysons, Virginia 22102
Board of Directors
- Immediate Past President (2006 – 2007)
- President (2005 – 2006)
- President-Elect (2004 – 2005)
- Vice President (2003 – 2004)
- Secretary (2002 – 2003)
- Treasurer (2001 – 2002)
- Chairman, Court Committee (2000 – 2001)

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.

Articles Review Board, Virginia Law Review (1994 – 1995)

Editorial Board, Virginia Law Review (1993 – 1994)

Departmental Honors, History and Latin American Studies, Wesleyan University (1991)

Phi Beta Kappa, Wesleyan University (1991)

Student Fellow, Center for the Humanities, Wesleyan University (1991)

Davenport Scholarship, Wesleyan University (1990)

Ford Foundation Scholarship (1990)

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

Defender Services Advisory Group
Representative for the Fourth, Eleventh, and District of Columbia Circuits (2013 – 2015)

Edward Bennett Williams Inn of Court, Barrister (2015 – present)

Federal Bar Association, Criminal Law Section (2009 – 2012)
Secretary (approximately 2011 – 2012)

Federal Bar Association, Northern Virginia Chapter (1996 – present)
Immediate Past President (2006 – 2007)
President (2005 – 2006)
President-Elect (2004 – 2005)
Vice President (2003 – 2004)
Secretary (2002 – 2003)
Treasurer (2001 – 2002)
Chairman, Court Committee (2000 – 2001)
Board of Directors (1996 – 2000)

Federal Defender Organization
Legislative Expert Panel, Chair (2008 – 2015)
U.S. Sentencing Guidelines Committee (2010 – 2015)

Federal Magistrate Judges Association (2015 – present)

Fourth Circuit CJA Appellate Panel Committee (2008 – 2014)

Fourth Circuit Judicial Conference (1998 – present)

George Mason American Inn of Court, Barrister (approximately 1997 – 2001)

Historical Society for the United States District Court for the Eastern District of Virginia
Board of Directors (2006 – 2016)

United States District Court for the Eastern District of Virginia
Criminal Justice Act Committee, Alexandria Division (2013 – 2015; 2019 – present)
Ad Hoc Committee on Cooperators (2020)
Ad Hoc Committee on Probation Search and Seizure Manual (2020)
Building Security Committee, Alexandria Division (2010 – 2015)

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, 1995

There have been no lapses in membership. I have been an inactive member of the Virginia bar (judicial status) since my appointment to the bench in 2015.

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

United States Supreme Court, 2007
United States Court of Appeals for the Fourth Circuit, 1996
United States Court of Appeals for the District of Columbia Circuit, 2008
United States District Court, Eastern District of Virginia, 1996

There have been no lapses in membership.

11. **Memberships**:

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

American Amateur Karate Federation, Member (2010 – 2016)

Arlington Girls Softball Association, Assistant Coach (2005 – 2010)

Arlington Youth Volleyball, Assistant Coach (2012 – 2018)

Co-Ed Recreational Softball League, Bender Jewish Community Center of Greater Washington (approximately 2012 – 2016)

International Shotokan Karate Association of Northern Virginia, Member (1996 – 2001)

Shotokan Fudokan Karate-Do of Northern Virginia, Member, Fourth Degree Black Belt (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.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

I have searched my files, databases, and the internet for responsive publications. It is possible that I may have omitted one or more writings inadvertently.

Sequestration Threatens to Eviscerate Federal Public Defenders, THE HILL, July 23, 2013. Copy supplied.

TRAC Data on Fed. Sentencing: Fact Sheet: TRAC Analysis of Variations in Sentencing Misses the Mark, 25 FED. SENT. R. 18 (Oct. 2012). Copy supplied.

WITH THOMAS W. HILLIER, II & STEPHEN R. SADY, GAO REPORT REVEALS MULTIPLE WAYS TO END THE WASTE OF MILLIONS ON UNNECESSARY OVER-INCARCERATION (Apr. 4, 2012). Copy supplied.

With Amy Baron-Evans, *Booker Five Years Out: Mandatory Minimum Sentences and Department of Justice Charging Policies Continue to Distort Federal Sentencing Process*, 22 FED. SENT. R. 96 (Dec. 2009). Copy supplied.

News from the President, THE ROCKET DOCKET NEWS (Northern Va. Chapter of the Fed. Bar Ass'n), Sept. 2006, at 1. Copy supplied.

News from the President, THE ROCKET DOCKET NEWS (Northern Va. Chapter of the Fed. Bar Ass'n), June 2006, at 1. Copy supplied.

News from the President, THE ROCKET DOCKET NEWS (Northern Va. Chapter of the Fed. Bar Ass'n), Feb. 2006, at 1. Copy supplied.

News from the President, THE ROCKET DOCKET NEWS (Northern Va. Chapter of the Fed. Bar Ass'n), Nov. 2005, at 1. 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 served on the Board of Directors of the Historical Society for the United States District Court for the Eastern District of Virginia from 2006 to 2016. During that time, the Historical Society commissioned a book: JOHN O. PETERS, FROM MARSHALL TO MOUSSAOUI: FEDERAL JUSTICE IN THE EASTERN DISTRICT OF VIRGINIA (2013). The book provides a comprehensive history of the United States District Court for the Eastern District of Virginia, including major cases and distinguished jurists, from its inception to the present. Hardcopy and press coverage supplied.

I also assisted in the preparation of the following:

Amy Baron-Evans, Jennifer Coffin, and Paul J. Hofer, *TRAC's Report Claiming 'Surprising Judge-to-Judge Variation' Fails to Compare Similar Cases, Relies on Poor Quality Data, Uses an Unreliable Method of Identifying Case Type, Uses Incorrect Methods of Reporting Sentence Length, and Contains Numerous Errors*, 25 FED. SENT. R. 20 (Oct. 2012). Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Comment Letter to Advisory Comm. on Evidence Rules, Comm. on Rules of Prac. & Proc., Admin. Office of the U.S. Courts (Jan. 3, 2013). Copy supplied.

Comment Letter to Comm. on Rules of Prac. & Proc. of the Judicial Conf. of the United States (Feb. 15, 2012). Copy supplied.

Testimony:

Sequestering Justice: How the Budget Crisis is Undermining Our Courts Before the Subcomm. on Bankruptcy & the Courts of the Sen. Comm. on the Judiciary, 113th Cong. 10 (2013) (testimony given as Federal Public Defender for the Eastern District of Virginia, on behalf of the Federal Public and Community Defenders). Testimony and transcript supplied. Video available at https://www.youtube.com/watch?v=pwGtpNGAKGA.

Public Hearing Before the U.S. Sent'g Comm'n Regarding Federal Sentencing Options after Booker – *February 16, 2012* (testimony given as Federal Public Defender for the Eastern District of Virginia). Testimony and transcript supplied.

Public Hearing Before the U.S. Sent'g Comm'n Regarding Retroactivity of Amendment 2, Pertaining to Federal Drug Offenses – June 1, 2011 (testimony given as Federal Public Defender for the Eastern District of Virginia). Testimony and transcript supplied.

Public Hearing Before the U.S. Sent'g Comm'n Regarding Statutory Mandatory Minimum Penalties in Federal Sentencing – May 27, 2010 (testimony given as Federal Public Defender for the Eastern District of Virginia). Testimony and transcript supplied.

Public Hearing Before the U.S. Sent'g Comm'n Regarding Federal Sentencing Policy – July 9, 2009 (testimony given as Federal Public Defender for the Eastern District of Virginia). Testimony and transcript supplied.

Hearing Before the Advisory Committee on the Federal Rules of Criminal Procedure Regarding Proposed Amendments – April 6, 2009 (testimony given as the Federal Public Defender for the Eastern District of Virginia). On January 9, 2009, Thomas W. Hillier, the Federal Public Defender for the Western District of Washington, drafted and submitted public comments on behalf of the Federal Public and Community Defenders, which formed the basis of his and my testimony before the Advisory Committee. Mr. Hillier's public comment letter and my testimony notes supplied. The Advisory Committee's Minutes (April 6-7, 2009) and subsequent Report (May 11, 2009) referencing my testimony also supplied.

Cracked Justice – Addressing the Unfairness in Cocaine Sentencing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary, 110th Cong. 2 (2008), (testimony given as Federal Public Defender for the Eastern District of Virginia, on behalf of the Federal Public and Community Defenders), *reprinted in* 20 FED. SENT. R. 257 (2008). Testimony and transcript supplied. Video available at https://www.c-span.org/video/?204184-1/federal-cocaine-sentencing-laws.

Amicus Briefs:

I conducted a database search for any amicus briefs on which my name appears as an amicus party, and the results are below. I did not write or participate in the drafting of these briefs, which were submitted on behalf of the majority, if not all, of the federal public defenders and community defenders in the country.

Brief for the National Association of Criminal Defense Lawyers, et al. as Amici Curiae Supporting Petitioner, *Tablada v. Thomas*, 560 U.S. 964 (2010) (No. 08-11034, 09-5201), 2009 U.S. S. Ct. Briefs LEXIS 3509.

Brief for the National Association of Criminal Defense Lawyers, et al. as Amici Curiae Supporting Petitioner, *Magwood v. Culliver*, 558 U.S. 1108 (2010) (No. 09-158), 2010 U.S. S. Ct. Briefs LEXIS 19.

Brief for the National Association of Criminal Defense Lawyers, et al. as Amici Curiae Supporting Petitioner, *Barber v. Thomas*, 560 U.S. 474 (2010) (No. 09-5201), 2010 U.S. S. Ct. Briefs LEXIS 47.

Brief for the Federal Public and Community Defenders and the National Association of Federal Defenders as Amici Curiae Supporting Petitioner, *Dillon v. United States*, 560 U.S. 817 (2010) (No. 09-6338), 2010 U.S. S. Ct. Briefs LEXIS 83.

Brief for the Federal Public and Community Defenders and the National Association of Federal Defenders as Amici Curiae Supporting Petitioner, *Pepper v. United States*, 562 U.S. 476 (2011) (No. 09-6822), 2010 U.S. S. Ct. Briefs LEXIS 1523.

Brief for the Federal Public and Community Defenders and the National Association of Federal Defenders as Amici Curiae Supporting Petitioners, *Claiborne v. United States*, 548 U.S. 1016 (2006) (No. 06-5618, 06-5754), 2006 U.S. S. Ct. Briefs LEXIS 1347.

In addition to the statements listed above, I have attended and/or provided comments at numerous nonpublic or closed-door meetings at the Administrative

Office of the U.S. Courts as a representative of the federal public defender community.

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

I have searched my personal files, calendar, and the internet in an effort to identify all events responsive to this question. I may have omitted one or more events inadvertently.

June 16, 2021: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

May 12, 2021: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 7, 2021: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

March 11, 2021: Panel Speaker, "United States Magistrate Judges," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. I used substantially the same notes that were provided for the CLE on April 15, 2016.

December 17, 2020: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

September 30, 2020: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

July 29, 2020: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

February 20, 2020: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

February 19, 2020: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

January 24, 2020: Panel Speaker, "United States Magistrate Judges," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. I used substantially the same notes that were provided for the CLE on April 15, 2016.

November 21, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

September 23, 2019: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

August 15, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used

substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

July 25, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

July 10, 2019: Panel Speaker, "How to Land a Clerkship: Practical Advice from Judges," American Constitution Society, Washington, DC Lawyer Chapter, Washington, District of Columbia. The panel addressed strategies that law students and new lawyers can pursue to land a clerkship. I have no notes, transcript, or recording. The address for the American Constitution Society is 1899 L Street, Northwest, Suite 200, Washington, District of Columbia 20036.

June 4, 2019: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

May 2, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

April 25, 2019: Take Our Children to Work Day, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I presided over the mock trial portion of this day-long event. Mock trial script supplied.

March 28, 2019: Panel Speaker, "The Role of the U.S. Sentencing Guidelines 14 Years After *Booker* and the First Step Act," Sentencing Law and Procedures 2019 Update (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This panel of criminal law experts discussed the U.S. Sentencing Guidelines, the First Step Act, and best practices for sentencing hearings in the EDVA. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

March 21, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

February 21, 2019: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

December 6, 2018: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

December 3, 2018: Guest Speaker, "Criminal Justice Ethics" (CRIM 306-003), James Gillis, Adjunct Professor, George Mason University, Fairfax, Virginia. The presentation was a discussion with students regarding careers in law as well as ethical challenges faced by defense lawyers and judges. I have no notes, transcript, or recording. The address for George Mason University is 4400 University Drive, Fairfax, Virginia 22030.

September 24, 2018: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

June 15, 2018: Panel Moderator, "Rallies, Riots and Remonstrations: What Does the First Amendment Protect, and What Limits Are There for Citizens, Local Governments, and Law Enforcement?" (CLE), Virginia State Bar 80th Annual Meeting, Virginia Beach, Virginia (co-sponsored by VSB Diversity Conference; Hispanic Bar Association of Virginia; Old Dominion Bar Association; Northern Virginia Black Attorneys Association; Access to Legal Justice Committee; Virginia Equality Bar Association; the Federal Bar Association, Northern Virginia Chapter; and the Local Government Attorneys of Virginia). I moderated a panel on the scope and contours of the First Amendment against the backdrop of the Charlottesville rally. I have no notes, transcript, or recording. The address for the Virginia State Bar is 1111 East Main Street #700, Richmond, Virginia 23219.

May 30, 2018: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 27, 2018: Panel Speaker, "United States Magistrate Judges," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. I used substantially the same notes that were provided for the CLE on April 15, 2016.

April 5, 2018: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

February 28, 2018: Guest Speaker, "Service Above Self," Rotary Club of Washington, District of Columbia. Notes supplied.

February 22, 2018: Moderator, "Clerkship Panel," Federal Bar Association, Northern Virginia Chapter, Arlington, Virginia (co-sponsored by the Young Lawyers' Committee of FBA-NOVA and the Office of Career and Academic Services, George Mason University's Antonin Scalia Law School). The panel discussed strategies that law students and new lawyers can use to land a clerkship. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

February 1, 2018: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

December 4, 2017: Guest Speaker, "Criminal Justice Ethics" (CRIM 306-003), James Gillis, Adjunct Professor, George Mason University, Fairfax, Virginia. The presentation was a discussion with students regarding careers in law as well as ethical challenges faced by defense lawyers and judges. I have no notes, transcript, or recording. The address for George Mason University is 4400 University Drive, Fairfax, Virginia 22030.

September 26, 2017: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

September 15, 2017: Panel Speaker, "Sentencing: A View from the Bench," Annual White Collar Seminar (CLE), National Association of Criminal Defense Lawyers, Washington, District of Columbia. This panel involved federal judges

from around the country discussing sentencing policy and practices. I have no notes, transcript, or recording. The address for the National Association of Criminal Defense Lawyers is 1660 L Street, Northwest, #12, Washington, District of Columbia 20005.

August 23, 2017: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

August 3, 2017: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

June 15, 2017: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

May 23, 2017: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 27, 2017: Take Our Children to Work Day, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I presided over the mock trial portion of this day-long event. Mock trial script supplied.

April 21, 2017: Panel Speaker, "United States Magistrate Judges," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. I used substantially the same notes that were provided for the CLE on April 15, 2016.

April 20, 2017: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

April 7, 2017: Tenth Anniversary Keynote Speaker, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. Notes supplied.

November 3, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

October 20, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

September 28, 2016: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

September 1, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

June 2, 2016: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

June 2, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

May 20, 2016: Speaker, Investiture of Geremy Kamens, United States District Court for the Eastern District of Virginia, Norfolk, Virginia. Notes supplied.

May 5, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

April 28, 2016: Take Our Children to Work Day, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I presided over the mock trial portion of this day-long event. Mock trial script supplied.

April 15, 2016: Panel Speaker, "United States Magistrate Judges," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Notes and CLE outline supplied.

April 7, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

April 6, 2016: Guest Speaker, "Criminal Justice Ethics" (CRIM 306-003), James Gillis, Adjunct Professor, George Mason University, Fairfax, Virginia. The presentation was a discussion with students regarding careers in law as well as ethical challenges faced by defense lawyers and judges. I have no notes, transcript, or recording. The address for George Mason University is 4400 University Drive, Fairfax, Virginia 22030.

March 3, 2016: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

November 12, 2015: Guest Speaker, "Criminal Justice Ethics" (CRIM 306-003), James Gillis, Adjunct Professor, George Mason University, Fairfax, Virginia. The presentation was a discussion with students regarding careers in law as well as ethical challenges faced by defense lawyers and judges. I have no notes, transcript, or recording. The address for George Mason University is 4400 University Drive, Fairfax, Virginia 22030.

October 23, 2015: Panel Speaker, "Calibrating the Scales of Criminal Justice: View from the Bench," Eighth Annual Fall Institute (CLE), American Bar Association, Criminal Justice Section, Washington, District of Columbia. Recording available at https://www.youtube.com/watch?v=oa1Pk2sOT50.

October 1, 2015: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

September 29, 2015: Speaker, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. Every year since becoming a magistrate judge and alongside my fellow judges in the Alexandria Division, I have attended this

annual event to introduce my law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

July 16, 2015: Speaker, Investiture of Manuel A. Capsalis, Fairfax General District Court, Fairfax, Virginia. Notes supplied.

July 16, 2015: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

June 18, 2015: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. I used substantially the same notes that were provided for the naturalization ceremony on June 4, 2015.

June 4, 2015: Presiding Judge, Naturalization Ceremonies, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. Notes supplied.

May 28, 2015: Panel Speaker, "Timely Topics the Magistrate Judges Think You Should Know," Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This annual CLE panel features all magistrate judges in the Alexandria Division discussing practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 28, 2015: Welcoming Remarks, "The Criminal Justice Act: A Symposium to Celebrate 50 Years," co-sponsored by the Federal Judicial Center, Defender Services Office, American Constitution Society, and Heritage Foundation, Washington, District of Columbia. Recording available at https://www.youtube.com/watch?v=VMNvvkDa_ik.

March 20, 2015: Speaker, Investiture of Hon. Michael S. Nachmanoff, United States District Court for the Eastern District of Virginia, Alexandria, Virginia. Transcript supplied.

January 19, 2015: Panel Speaker, "Discussion on Sentencing and Race," Celebrating the Life and Legacy of Dr. Martin Luther King, Jr., Washington & Lee University, Lexington, Virginia. Recording available at https://www.youtube.com/watch?v=mahZqK5me3U.

November 17, 2014: Guest Speaker, "Prosecuting Terrorism & National Security Cases" (Law 419), Dennis Fitzpatrick, Adjunct Professor, George Mason

University's Antonin Scalia Law School. My remarks addressed the defense perspective on representing defendants in terrorism and national security cases. I have no notes, transcript, or recording. The address for George Mason University's Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, Virginia 22201.

November 13, 2014: Co-Facilitator for Sentencing Breakout Group IV and Panel Speaker for Roundtable Sentencing Strategies Discussion, Orientation Seminar for Assistant Federal Defenders, Federal Judicial Center, Santa Fe, New Mexico. This breakout discussion focused on sentencing strategies and the analysis of the United States Sentencing Guidelines. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

October 24, 2014: Guest Speaker, Annual Continuing Legal Education Program, Northern Virginia Black Attorneys Association, McLean, Virginia. I gave a presentation on federal court practice tips for state court practitioners. I have no notes, transcript, or recording. The address for the Northern Virginia Black Attorneys Association is 10660 Page Avenue, #4452, Fairfax, Virginia 22030.

September 12, 2014: Speaker, Portrait Unveiling of the Hon. James R. Spencer, United States District Court for the Eastern District of Virginia, Richmond, Virginia. Notes supplied.

July 25, 2014: Panel Speaker, "Responding to Terrorism Charges in Federal Court," Annual Criminal Justice Act Panel and Federal Defender Conference, Offices of the Federal Public Defender for the Middle and Western Districts of North Carolina, Greensboro, North Carolina. PowerPoint supplied.

June 12, 2014: Panel Speaker, "The Right to Counsel in The Federal Courts and Courts Martial: A Comparative Program," Federal Bar Association (co-sponsored by the District of Columbia, Capitol Hill, and Pentagon Chapters of the FBA and the Criminal Law and Veterans and Military Law Sections of the FBA), U.S. District Court for the District of Columbia, Washington, District of Columbia. This panel explored the development of the right to counsel in the military courts and the civilian federal courts. I have no notes, transcript, or recording, but press coverage supplied. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 29, 2014: Panel Speaker, "BOP Update," National Seminar for Federal Defenders, Federal Judicial Center, Cleveland, Ohio. This panel was on the current state of Bureau of Prisons practices and policies relating to recent developments in sentencing law. I have no notes, transcripts, or recordings. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary

Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

April 25, 2014: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 10 – 11, 2014: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

March 27, 2014: Panel Speaker, "Obtaining and Admitting Electronic Evidence in Federal Courts: An Interactive Discussion with Trial-Like Demonstrations" (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This panel discussion addressed methods by which electronic evidence may be obtained and issues relating to the admission or exclusion of such evidence in federal court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

March 20, 2014: Guest Speaker, "National Security Law" (Law 475-01), Hon. David Novak, Adjunct Professor, William & Mary University Law School, Williamsburg, Virginia. The presentation was on the right to counsel and the defense perspective on terrorism and national security cases. I have no notes, transcript, or recording. The address for William & Mary University Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

February 11, 2014: Panel Speaker, Comparative Systems Subcommittee Meeting, Response Systems to Adult Sexual Assault Crimes Panel, Arlington, Virginia. I participated in a panel on how federal courts deal with sexual assault, which was part of a congressionally-mandated 12-month independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses in the military. I have no notes, transcript or recording. The address for the Response Systems to Adult Sexual Assault Crimes Panel is One Liberty Center, 875 North Randolph Street, Arlington, Virginia 22203.

January 13, 2014: Guest Speaker, "Your Money" Series on Federal Programs, C-SPAN's Washington Journal, Washington, District of Columbia. Recording available at https://www.c-span.org/video/?317159-5/washington-journal-federal-public-defender-program.

April 18-19, 2013: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

March 21, 2013: Panel Speaker, "Voices from the Field: Solutions from Current and Former Indigent Defense Providers," Considering *Gideon* at 50: The History and Future of Indigent Defense, American Constitution Society, Washington, District of Columbia. Recording available at https://www.youtube.com/watch?v=mnolu28oN1k.

May 31, 2012: Panel Speaker, "Nuts, Bolts, and Strategy of Defending National Security Cases," National Seminar for Federal Defenders, Federal Judicial Center, Atlanta, Georgia. This panel presentation and brainstorming session focused on the legal and logistical issues in handling a national security case. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

April 27, 2012: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 19 – 20, 2012: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

March 8, 2012: Guest Speaker, "Terrorism and International Federal Trials: The Prosecution of Peripheral Players and the Marginalization of Article III Courts," Federal Law at the French Quarter, Texas Criminal Defense Lawyers Association, New Orleans, Louisiana. Notes and PowerPoint supplied.

January 19, 2012: Speaker, Norfolk & Portsmouth Bar Association, Norfolk, Virginia. I addressed members of the bar association in an effort to encourage law firms to participate in the Federal Public Defender's pro bono program. I have no notes, transcript, or recording. The address of the Norfolk & Portsmouth Bar Association is City of Norfolk Courthouse, Second Floor, 150 Saint Paul's Boulevard, Norfolk, Virginia 23510.

January 17, 2012: Panel Speaker, "A Day in the Life of a Federal Public Defender and CJA Attorney," Knowledge Exchange, Administrative Office of the United States Courts, Washington, District of Columbia. Notes supplied.

October 20, 2011: Panel Speaker, "Federal Criminal Practice: Discovery Issues," Annual Criminal Justice Act Panel and Federal Defender Conference, Office of the Federal Public Defender for the District of South Carolina, Charleston, South Carolina. Notes supplied.

April 25, 2011: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 14 – 15, 2011: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

February 16, 2011: Panel Speaker, "Hot Topics in Criminal Sentencing: Government and Defense Perspective." Judicial Workshop, Fourth Circuit Judicial Conference, Charleston, South Carolina. PowerPoint supplied.

November 16, 2010: Co-Facilitator for Evidence Breakout Group V, Orientation Seminar for Assistant Federal Defenders, Federal Judicial Center, Santa Fe, New Mexico. This breakout discussion focused on questions of admissibility of

evidence. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

April 30, 2010: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 15 – 16, 2010: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

April 1, 2010: Speaker, "Inside the Beltway: Update on DOJ Initiatives, Congress, and the United States Sentencing Commission," Annual Criminal Justice Act Panel and Federal Defender Conference, Offices of the Federal Public Defender for the Middle and Western Districts of North Carolina, Asheville, North Carolina. Notes and PowerPoint supplied.

November 17, 2009: Co-Facilitator for Evidence Breakout Group III, Orientation Seminar for Assistant Federal Defenders, Federal Judicial Center, Santa Fe, New Mexico. I do not recall the specific topic of discussion. Our job was to facilitate interaction among the participants in the group. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

April 24, 2009: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 16 – 17, 2009: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

January 7, 2009: Moderator, "Criminal Law for the Civil Practitioner" (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. The panel discussion was geared to assisting civil practitioners in the basics of EDVA criminal practice. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

September 25, 2008: Moderator, "Robes in the Schools" Program (Mt. Vernon High School), Biennial Conference, Just the Beginning Foundation and the Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. This event involved judges and lawyers speaking to high school, college, and law students in the Washington metropolitan area about careers in the law. I have no notes, transcript, or recording, but press coverage supplied. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

June 20, 2008: Invocation Speaker, Investiture of Manuel A. Capsalis, Virginia State Bar, Virginia Beach, Virginia. I gave a brief invocation before the investiture of Manuel A. Capsalis as President of the Virginia State Bar. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, #700, Richmond, Virginia 23219.

June 19, 2008: Luncheon Keynote Speaker, Fifth Annual Criminal Law Conference, Federal Bar Association, Criminal Law Section, New York, New York. Notes and press coverage supplied.

May 15, 2008: Speaker, Federal Bar Association, El Paso Chapter, El Paso, Texas. This presentation was on the Supreme Court's recent decision in *Kimbrough v. United States* and its impact on sentencing in the federal courts. I have no notes, transcript, or recording. The address of the Federal Bar Association, El Paso Chapter, is 700 East San Antonio Avenue, Suite D-401, El Paso, Texas 79901 (Attention: Nicole Bombara).

May 13, 2008: Speaker, Federal Bar Association, Hampton Roads Chapter, Norfolk, Virginia. Notes supplied.

April 25, 2008: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 10 – 11, 2008: Welcome Remarks, Annual Frank Dunham Federal Criminal Defense Conference (CLE), Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I founded, organized, and attended this conference annually, at which I gave welcoming remarks and briefly introduced speakers. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

March 21, 2008: Speaker, Annual Criminal Justice Act Panel and Federal Defender Conference, Offices of the Federal Public Defender for the Middle and Western Districts of North Carolina, Asheville, North Carolina. This presentation was on the Supreme Court's recent decision in *Kimbrough v. United States* and its impact on sentencing in the federal courts. I have no notes, transcript, or recording. The address for the Office of the Federal Public Defender for the Middle District of North Carolina is 301 North Elm Street, #410, Greensboro, North Carolina 27401. The address for the Office of the Federal Public Defender for the Western District of North Carolina is 129 West Trade Street, Suite 300, Charlotte, North Carolina 28202.

March 13, 2008: Speaker, Federal Bar Association, Northern District of Ohio Chapter, Cleveland, Ohio. This presentation was on the legacy of Frank Dunham and the high-profile cases involving national security handled by the Office of the Federal Public Defender for the Eastern District of Virginia. I have no notes, transcript, or recording. The address of the Federal Bar Association, Northern District of Ohio Chapter, is P.O. Box 14760, Cleveland, Ohio 44114.

March 30, 2007: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

September 26, 2006: Welcoming Remarks, Annual Torrey Armstrong Memorial Lecture & Federal Law Clerk Introduction, Federal Bar Association, Northern Virginia Chapter, George Washington Masonic Temple, Alexandria, Virginia. As the chapter president, I gave welcoming remarks at this annual event to introduce EDVA law clerks to the federal bar. I have no notes, recording, or transcript. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

June 22, 2006: Welcoming Remarks, Annual Meeting, Federal Bar Association, Northern Virginia Chapter, Army/Navy Country Club, Arlington, Virginia. As the Chapter President, I gave welcoming remarks before this annual meeting and CLE, featuring remarks by Chuck Rosenberg, U.S. Attorney for the Eastern District of Virginia, and a panel discussion on "Hot Topics In False Claims Act And Qui Tam Litigation." I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

May 17, 2006: Welcoming Remarks, Annual Bench-Bar Dialogue (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Chapter President, I gave welcoming remarks before this annual CLE panel on practical practice tips unique to this Court. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 7, 2006: Welcoming Remarks and Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Acting Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. Additionally, I made welcoming remarks in my capacity as president of the chapter that year. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

March 1, 2006: Welcoming Remarks, "Judicial Perspectives on *Daubert* in DC and Virginia Federal Courts" (CLE), Federal Bar Association, Northern Virginia Chapter, Army/Navy Country Club, Arlington, Virginia. As the Chapter President, I gave welcoming remarks before this CLE event. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

October 11, 2005: Welcoming Remarks, Recent Changes to Bankruptcy Code, featuring Judge Stephen S. Mitchell of the United States Bankruptcy Court (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the chapter president, I gave welcoming remarks before this CLE event. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

April 8, 2005: Panel Speaker, "Office of the Federal Public Defender," Annual Introduction to the Federal Courthouse (CLE), Federal Bar Association, Northern Virginia Chapter, Alexandria, Virginia. As the Acting Federal Public Defender, I served on the panel of speakers for this annual event, providing an introduction to the work of the Office of the Federal Public Defender to attorneys newly admitted to the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Federal Bar Association, Northern Virginia Chapter, is 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102 (Attention: Robert Vieth, President).

February 28, 2004: Panel Speaker, "Criminal Law: Sentencing Guidelines," Fifth Annual Conference on Public Service and the Law at the University of Virginia School of Law, Charlottesville, Virginia. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

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

I have searched databases and the internet for responsive publications. It is possible that I may have omitted one or more publications inadvertently.

Ellen D. Marcus, *A Brief Introduction to Magistrate Judge Michael S. Nachmanoff*, THE ROCKET DOCKET NEWS (Northern Va. Chapter of the Fed. Bar Ass'n), Mar. 2015. Copy supplied.

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Clemency Project 2014 Praises Justice Department for Breathing New Life into Clemency Process, TARGETED NEWS SERV., Apr. 23, 2014. Copy supplied.

Gerald T. Zerkin Presented with Carrico Professionalism Award, STATES NEWS SERV., Feb. 18, 2014. Copy supplied.

Matthew Barakat, *Judge in Gay Marriage Case Has Diverse Resume*, ASSOCIATED PRESS, Feb. 6, 2014. Copy supplied (reprinted in multiple outlets).

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Frank Green, *Drug Dealers Get Much Stiffer Sentences by Rejecting Plea Deals*, THE NEWS VIRGINIAN, Dec. 16, 2013. Copy supplied (reprinted in multiple outlets).

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Zoe Tillman, *Shutdown Over, But Judges Wary; Federal Judiciary Worried about Funding Levels*, NAT'L L.J., Oct. 21, 2013. Copy supplied.

Government Shutdown Deals Huge Blow to Criminal Justice System, HUFFINGTON POST, Oct. 16, 2013. Copy supplied.

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Frank Green, *Federal Courts in Va. Might Feel Pinch Soon*, RICHMOND TIMES DISPATCH, Oct. 10, 2013. Copy supplied.

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Federal Defender Wants Out of Terrorism Case Due to Budget Cuts, NPR, June 12, 2013. Copy supplied.

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John Schwartz, *Drug Terms Reduced, Freeing Prisoners*, N.Y. TIMES, Nov. 2, 2011. Copy supplied.

To The Point, *Crack Sentencing Reforms Take Effect*, KCRW (Nov. 2, 2011). Recording available at https://www.kcrw.com/news/shows/to-the-point/anonymous-and-the-real-world-implications-of-hacktivism/crack-sentencing-reforms-take-effect.

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Thousands of Prisoners May be Eligible for Early Release, NPR, June 2, 2011. Transcript supplied.

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Carol Cratty, *Terror Suspect Pleads Guilty in Threat Against 'South Park' Creators*, CNN.COM, Oct. 20, 2010. Copy supplied.

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Del Quentin Wilber, *Flaws in Crack Sentencing Guidelines Are Revised*, PITTSBURGH POST-GAZETTE, Jan. 4, 2009. Copy supplied (reprinted in multiple outlets).

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Dan Eggen & Jerry Markon, *Va. Federal Prosecutor Picked for Justice Post,* WASH. POST, Oct. 22, 2005. Copy supplied.

Michael Tackett, *Airport Net Caught Small Fry; Washington-Area Sweep Yielded No Terror Related Charges*, CHI. TRIB., Oct. 6, 2002. Copy supplied.

Matthew Barakat, *Terrorism Probe Ensnares Fairfax Woman, 57*, ASSOCIATED PRESS, Nov. 28, 2001. Copy supplied.

Earl Kelly, *[No Headline in Original]*, DAILY RECORD, May 31, 2000. Copy supplied.

Dana Hull, *Fire Official is Cleared of Theft at Fort*, WASH. POST, Dec. 5, 1998. Copy supplied.

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

In March 2015, I was appointed to serve as a United States Magistrate Judge in the Alexandria Division of the United States District Court for the Eastern District of Virginia. I was selected by the district judges of the Alexandria Division to serve an eight-year renewable term.

The district court has jurisdiction over civil matters raising federal questions, civil matters with diversity of citizenship, and federal criminal matters. As a magistrate judge, my jurisdiction is governed by 28 U.S.C. § 636. I preside over civil lawsuits by consent of the parties, decide civil discovery disputes and non-dispositive motions referred to me by district judges, and conduct settlement negotiations. I conduct initial appearances and bail hearings in felony criminal cases and oversee criminal cases in full when they involve petty offenses and misdemeanor charges. I review applications for search and arrest warrants.

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

In the past six years, I have presided over at least 18 criminal bench trials in misdemeanor or petty offense cases. (It is difficult to estimate the total number because many of the petty offenses pre-dated the CM/ECF system and cannot be accessed to provide a comprehensive record.)

i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the

name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Catchings et al. v. Wilson et al.*, No. 1:21-cv-00428-TSE (D. Md.)

Plaintiffs, federal pretrial detainees held in a state-run detention facility in Baltimore, filed this class action lawsuit alleging constitutional violations based on the conditions of their confinement and exposure to COVID-19. After a severe outbreak of COVID-19 among inmates and staff at the detention facility, plaintiffs alleged that the conditions at the facility, specifically protocols for testing, quarantining, vaccinating, and cleaning, were insufficient and that injunctive relief was required to address the health and safety of the inmates. The case was originally filed in the United States District Court for the District of Maryland, but it was transferred following the recusal of the District Judges in Maryland. This matter was reassigned to Judge Ellis, who referred all matters related to discovery and settlement to me. After a ten-hour settlement conference and follow-up discussions, the parties successfully reached agreement as to terms to ensure the safety and health of detainees.

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2. *In re Dominion Dental Servs. USA, Inc. Data Breach Litig.*, 429 F. Supp. 3d 190 (E.D. Va. 2019)

Plaintiffs brought this class action lawsuit against Dominion Dental Services and other providers of dental and vision benefits following the disclosure of a data breach of customers' personal information over a period spanning nine years. Judge Brinkema referred all discovery matters to me. Plaintiffs filed a motion to compel production of the cybersecurity report produced in response to the data breach. Defendants opposed the motion, arguing that the report was protected by the work product doctrine. I ordered the production of the report. Plaintiffs also brought a motion to compel complete answers to interrogatories, which I granted in part and denied in part. Judge Brinkema granted in part the defendants' motion to dismiss for lack of standing and rejected the class action claims of the plaintiffs. Plaintiffs filed an interlocutory appeal before the Fourth Circuit Court of Appeals. The parties subsequently submitted a joint motion for preliminary approval of class action settlement, which Judge Brinkema granted. The hearing on final approval of the settlement remains pending before Judge Brinkema.

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3. *United States v. Yerman*, No. 1:19-mj-108-MSN (Dkt. No. 15) (E.D. Va. June 4, 2019). Opinion supplied.

Mr. Yerman was charged in a two-count criminal information with carrying a concealed weapon, in violation of assimilated state law (18 U.S.C. § 13, assimilating Va. Code § 18.2-308(i)), and unlawful possession of a firearm in a federal facility, in violation of 18 U.S.C. § 930(a). Mr. Yerman approached the United States Marine Corps Base Quantico with a firearm in his vehicle and was stopped at the gate under a large canvas awning that covered the sidewalk and roadway. Defendant filed a motion to dismiss, arguing that he possessed a valid permit to possess a concealed firearm and that the statute prohibiting possession in a federal facility required the government to prove Mr. Yerman entered a "building or part thereof." The government opposed the motion and maintained that the awning covering the roadway constituted a part of the "building" housing the guard station. I granted the motion to dismiss as to both counts. The government did not appeal.

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4. *Doe v. Fairfax Cty. Sch. Bd.*, No. 1:18-cv-614-LO-MSN (Dkt. No. 178) (E.D. Va. June 28, 2019). Opinion supplied.

Plaintiff, a former high school student, brought this action under Title IX against the Fairfax County School Board alleging deliberate indifference following her claim of sexual assault by a fellow student during a school band trip. Plaintiff alleged that the school failed to investigate her claims or follow its own procedures, and then threatened her with discipline while permitting the alleged perpetrator to remain in school. Judge O'Grady referred the case to me for all discovery matters, and I resolved numerous discovery disputes, including a motion to compel an independent mental examination, a motion to compel production of text messages, and several motions to quash. I granted sanctions against the defendant for spoliation of evidence, including witness statements, interview notes, and text messages. The case ultimately went to trial before Judge O'Grady, and the jury found in favor of the defendant. The case remains pending in the Fourth Circuit Court of Appeals.

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5. *Noce v. Clarke*, No. 1:18-cv-513-TSE-MSN (Dkt. No. 14) (E.D. Va. Oct. 30, 2018). Report and recommendation supplied.

Petitioner was convicted of nine counts of incest in state court following a trial and sentenced to a term of imprisonment of twenty years. He filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking collaterally to attack his conviction based on ineffective assistance of counsel, arguing his counsel failed to challenge the admissibility of the victim's "recovered" memories. Respondent filed a motion to dismiss, and Judge Ellis referred the matter to me. Finding that the Supreme Court of Virginia's rejection of petitioner's claim based on the standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), was reasonable, I entered a report and recommendation recommending dismissal of the lawsuit with prejudice, which was adopted by Judge Ellis. Petitioner appealed to the Fourth Circuit Court of Appeals, which dismissed the appeal.

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6. *Plastipak Packaging, Inc. v. Niagara Bottling, LLC*, No. 1:17-cv-1463-AJT-MSN (E.D. Va.)

Plaintiff Plastipak Packaging, Inc. brought this patent infringement action against defendant Niagara Bottling, LLC, alleging defendant opened a manufacturing facility in the Eastern District of Virginia that produced plastic water bottles which infringed plaintiff's design. Judge Trenga referred the case to me for all discovery matters and settlement. The parties engaged in protracted non-dispositive discovery practice, and I resolved numerous motions, including multiple motions to compel, to strike expert testimony, and for issuance of letters rogatory. I presided over lengthy settlement negotiations which lasted several weeks, and the case ultimately settled prior to the resolution of summary judgment.

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7. *United States v. Frank*, No. 1:17-cr-114-LMB-MSN (Dkt. No. 76) (E.D. Va. Mar. 4, 2020). Report and recommendation supplied.

Defendant embezzled more than $19.4 million from his employer over a ten-year period. He entered a plea of guilty to one count of wire fraud, in violation of 18 U.S.C. § 1341, and was sentenced to 78 months of imprisonment and ordered to pay $19,440,331 in restitution. The government filed an application for a writ of garnishment seeking to garnish his 401(k) retirement accounts in partial satisfaction of his restitution obligations. Defendant opposed the application on the grounds that the account was inalienable. Judge Brinkema referred the matter to me. I recommended granting the application and, in footnote 11, noted with approval the government's offer to allow defendant to retain ten percent of the funds to pay any tax penalties associated with the early liquidation of the account. Upon review, Judge Brinkema adopted my findings and recommendations and, noting that the government had confirmed its offer to allow defendant to retain ten percent of the funds, granted permission to do so. The matter is currently pending before the Fourth Circuit Court of Appeals.

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8. *FireClean, LLC v. Tuohy*, No. 1:16-cv-294-JCC-MSN (Dkt. No. 34) (E.D. Va. June 14, 2016). Opinion supplied.

Plaintiff FireClean, LLC was a Virginia limited liability company that manufactured gun oil. Defendants were two bloggers who published the results of tests finding that the chemical composition of the gun oil was indistinguishable from cooking oil. Plaintiff brought claims of defamation against defendants. Defendant filed motions to dismiss for lack of personal jurisdiction and for failure to state claims upon which relief can be granted. Plaintiff sought leave to conduct limited jurisdictional discovery. After hearing oral argument, I denied leave to conduct jurisdictional discovery. Plaintiff timely objected to my decision, which was affirmed by Judge Cacheris. The case was dismissed for lack of personal jurisdiction. Plaintiff did not appeal.

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9. *Blowers v. Lerner, Esq., et al.*, No. 1:15-cv-889-GBL-MSN (Dkt. No. 97) (E.D. Va. Mar. 14, 2016). Report and recommendation supplied.

Plaintiff brought this action against a law firm that had sued him in a state court collection action for failure to pay a credit card debt. Plaintiff alleged violation of the Fair Debt Collection Practices Act. During discovery, defense counsel learned that plaintiff's counsel failed to convey an offer of settlement to his client. The case was ultimately dismissed after plaintiff became aware of his counsel's failure to communicate and terminated his services. Defendants then pursued sanctions against plaintiff's counsel for vexatiously multiplying the litigation pursuant to 28 U.S.C. § 1927. The motion was referred to me, and I recommended granting sanctions. Judge Lee adopted my recommendation, which was later affirmed by the Fourth Circuit Court of Appeals.

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10. *United States v. Agustin-Cabrera*, No. 1:15-mj-573-MSN (Dkt. No. 37) (E.D. Va. May 7, 2020). Opinion supplied.

Petitioner sought a writ of coram nobis to overturn a conviction for possession of marijuana in violation of 18 U.S.C. § 844. The defendant entered a plea to one count of possession of marijuana. He was sentenced to probation before judgment pursuant to 18 U.S.C. § 3607, which was subsequently converted to a conviction. He was later placed in removal proceedings. The Alexandria Commonwealth's Attorney's Office filed an application on petitioner's behalf seeking withholding of removal based upon his status as a victim of violent crime; however, the marijuana conviction posed an impediment to obtaining relief from deportation. The defendant filed a writ seeking to vacate his conviction based on defense counsel's failure to advise him of the immigration consequences of his conviction. Following oral argument, I granted the writ of coram nobis and vacated his conviction. The government did not appeal.

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

1. *In re Dominion Dental Servs. USA, Inc. Data Breach Litig.*, 429 F. Supp. 3d 190 (E.D. Va. 2019), No. 1:19-cv-1050-LMB-MSN (Dkt. No. 113) (E.D. Va. Dec. 19, 2019). Opinion supplied.

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2. *Chertoff Capital, L.L.C. v. Braes Capital, LLC et al.*, No. 1:19-cv-631-TSE-MSN (Dkt. No. 38) (E.D. Va. Oct. 31, 2019). Opinion supplied.

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3. *United States v. Yerman*, No. 1:19-mj-108-MSN (Dkt. No. 15) (E.D. Va. June 4, 2019). Opinion previously supplied in response to Q13c.

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4. *Doe v. Fairfax Cty. Sch. Bd.*, No. 1:18-cv-614-LO-MSN (Dkt. No. 178) (E.D. Va. June 28, 2019). Opinion previously supplied in response to Q13c.

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5. *Noce v. Clarke*, Case No. 1:18-cv-513-TSE-MSN (Dkt. No. 14) (E.D. Va. Oct. 30, 2018). Opinion previously supplied in response to Q13c.

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6. *Martian v. Berryhill*, No. 1:18-cv-12-LMB-MSN (Dkt. No. 21) (E.D. Va. Aug. 30, 2018)

Plaintiff: *Pro Se*

Defendant's Counsel:

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Current employment or contact information unknown

7. *United States v. Frank*, No. 1:17-cr-114-LMB-MSN (Dkt. Nos. 76, 83) (E.D. Va. 2020). Opinion previously supplied in response to Q13c.

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8. *FireClean LLC v. Tuohy*, No. 1:16-cv-294-JCC-MSN (Dkt. No. 34) (E.D. Va. June 14, 2016). Opinion previously supplied in response to Q13c.

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9. *Blowers v. Lerner, Esq., et al.*, No. 1:15-cv-889-GBL-MSN (Dkt. No. 97) (E.D. Va. Mar. 14, 2016). Opinion previously supplied in response to Q13c.

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10. *United States v. Agustin-Cabrera*, No. 1:15-mj-573-MSN (Dkt. No. 37) (E.D. Va. May 7, 2020). Opinion previously supplied in response to Q13c.

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

None of my cases have resulted in a petition for writ of certiorari.

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.

Tyrone B. v. Saul, No. 1:19-cv-1367-LMB-MSN (Dkt. No. 23) (E.D. Va. Nov. 30, 2020), *rev'd*, 1:19-cv-1367-LMB-MSN (Dkt. No. 24) (E.D. Va. Feb. 16, 2021): After his application for Disability Insurance Benefits was denied by the Social Security Administration, plaintiff appealed. The Commissioner moved to remand for further administrative proceedings and directed the ALJ to consider additional information from the Veterans Administration. The ALJ found no disability a second time after plaintiff failed to appear at his hearing. Plaintiff raised several issues on appeal, including whether the Acting Commissioner of the Social Security Administration was an unlawful acting official at the time the ALJ denied his claim. I recommended granting summary judgment in favor of the defendant on procedural grounds, based upon plaintiff's failure to appear at his second hearing before the ALJ. I also found that the Acting Commissioner's authority was proper. Judge Brinkema rejected the report and recommendation and found sua sponte that the ALJ's review on remand had not followed the instructions of the Appeals Council. Judge Brinkema remanded the case to the ALJ for further review. Copy supplied.

Bunk, et al. v. Birkart Globistics, et al., No. 1:02-cv-1168-AJT-MSN (Dkt. No. 1395) (E.D. Va. Jan. 8, 2016), *rev'd*, 1:02-cv-1168-AJT-MSN (Dkt. No. 1479) (E.D. Va. Aug. 22, 2017): This matter involved the government's effort to enforce a $24 million judgment under the False Claims Act. The Court issued a Writ of Continuing Non-Wage Garnishment over a foreign corporation in an effort to collect that judgment. One of the defendants sought to quash the writ on the grounds it was not properly served. I found that the writ was properly served under the Federal Rules of Civil Procedure. Judge Trenga sustained the defendant's objection and found that personal jurisdiction could not be established. Accordingly, he quashed the writ. The United States appealed Judge

Trenga's decision. The appeal was voluntarily dismissed after full satisfaction of the judgment was made. Copy supplied.

ExxonMobil Oil Corp. v. Black Stone Petroleum Inc., No. 1:16-cv-148-TSE-MSN (Dkt. No. 15) (E.D. Va. Aug. 10, 2016), *rev'd in part*, 221 F. Supp. 3d 755 (E.D. Va. 2016): This matter involved a contract dispute over a roadside service station in New Jersey. Exxon sued Black Stone Petroleum and FDD Realty for re-branding its service station and violating its contract. I recommended entry of default judgment against Black Stone but recommended dismissal of FDD Realty, finding that plaintiff was not an intended beneficiary of the contract between Black Stone and FDD Realty. I also recommended denial of pre- and post-judgment interest. Copy supplied. Judge Ellis affirmed in part and reversed in part, concluding that Exxon was a third-party beneficiary of the contract and that post-judgment interest should be awarded. Judge Ellis adopted the recommendation with respect to denial of pre-judgment interest.

Sectek, Inc. v. Diamond, No. 1:15-cv-1631-AJT-MSN (Dkt. No. 97) (E.D. Va. July 12, 2016), *rev'd*, No. 1:15-cv-1631-GBL-MSN, 2016 U.S. Dist. LEXIS 140098 (E.D. Va. Oct. 6, 2016): This case involved a dispute over the execution of a Stock Purchase Agreement. During pretrial proceedings, the parties filed cross-motions as to the application of the claw-back provisions regarding inadvertent disclosure of documents protected by the attorney-client privilege. I denied both motions and directed the parties to bring any dispute regarding specific disputed documents to the Court's attention immediately following depositions. Copy supplied. Diamond appealed and Judge Lee reversed, finding that that the privilege had been waived because Sectek failed to produce its privilege log in a timely manner, failed to meet its burden to establish the privilege, and failed to promptly rectify the inadvertent disclosure. Following trial of the matter, the parties settled all claims, vacating the final judgment and dismissing the appeal.

In the following cases, my recommendation was modified in part:

Douglas v. Sentel Corp., No. 1:18-cv-1534-TSE-MSN, 2020 U.S. Dist. LEXIS 149928 (E.D. Va. Mar. 11, 2020), *adopted in part*, No. 1:18-cv-1534-TSE-MSN, 2020 U.S. Dist. LEXIS 89421 (E.D. Va. May 21, 2020): In this motion for default judgment, plaintiff sought damages under Title VII of the Civil Rights Act for failure to accommodate his religion, creation of a hostile work environment, and retaliation, and also advanced state law claims of tortious interference with business expectancy, defamation, and conspiracy. I granted the motion in part and denied in part, finding that plaintiff had established violations under Title VII and one instance of defamation but had not established the remaining claims. I recommended damages in the form of lost wages ($282,814 plus an additional $98,985 to offset tax payments) and compensatory damages ($50,000), but no future pay or punitive damages, and also recommended granting the request for attorneys' fees and costs. On review, Judge Ellis adopted my findings of fact and

the report and recommendation, except that he did not award the $98,985 for income tax disparity and he added an additional $1,000 in punitive damages. In all other respects, Judge Ellis agreed with my findings and recommendations.

United States v. Frank, Case No. 1:17-cr-114-LMB-MSN (Dkt. No. 76) (E.D. Va. Mar. 4, 2020), *adopted in part*, No. 1:17-cr-114-LMB-MSN (Dkt. No. 83) (E.D. Va. May 11, 2020): The government filed an application for a writ of garnishment seeking to garnish defendant's 401(k) retirement accounts in partial satisfaction of his restitution obligations. Defendant opposed the application on the grounds that the account was inalienable. Judge Brinkema referred the matter to me, and I recommended granting the application but, in footnote 11, noted with approval the government's offer to allow defendant to retain ten percent of the funds to pay any tax penalties associated with the early liquidation of the account. Copy previously supplied in response to Q13c. Upon review, Judge Brinkema adopted my findings and recommendations and, noting that the government had confirmed its offer to allow defendant to retain ten percent of the funds, granted permission to do so. Copy supplied.

Doe v. Fairfax Cty. Sch. Bd., Case No. 1:18-cv-614-LO-MSN (Dkt. No. 178) (E.D. Va. June 28, 2019), *adopted in part*, No. 1:18-cv-614-LO-MSN (Dkt. No. 253) (E.D. Va. July 23, 2019): Plaintiff, a former high school student, brought this action under Title IX against the Fairfax County School Board alleging deliberate indifference following her claim of sexual assault by a fellow student during a school band trip. I granted sanctions against the defendant for spoliation of evidence, including witness statements, interview notes, and text messages. Copy previously supplied in response to Q13c. Defendant appealed, and Judge O'Grady granted the objection in part and denied in part. He found no clear error or any analysis contrary to law and agreed that there was a duty to preserve the documents, the documents existed, and the documents were relevant. Judge O'Grady further agreed sanctions were warranted but withheld ruling on the appropriate form of jury instruction until after evidence on the loss or destruction of documents was presented at trial. Copy supplied.

Aslani v. Curry, No. 1:16-cv-01398-LMB-MSN (Dkt. No. 18) (E.D. Va. Dec. 15, 2016), *adopted in part*, No. 1:16-cv-01398-LMB-MSN (Dkt. No. 35) (E.D. Va. Jan. 25, 2017): This matter came before me on both a motion for default judgment and a motion to set aside default, following improper service on the defendant. Plaintiff sought damages under Title IX of the Civil Rights Act, claiming violation of Title IX, retaliation, defamation per se, false light, and intentional infliction of emotional distress. I recommended dismissal of the case under 28 U.S.C. § 636(b)(1)(B) based on a lack of personal jurisdiction. The defendant had no ties to the state of Virginia, was a resident of Illinois, and the alleged violation took place in Illinois. Copy supplied. On review, Judge Brinkema adopted my findings that service was not proper and that the Eastern District of Virginia was not the proper venue. However, instead of dismissing the case, she transferred it to the Northern District of Illinois, Eastern Division. Copy supplied.

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

I have only one published opinion (*In re Dominion Dental Servs. USA, Inc. Data Breach Litig.*, 429 F. Supp. 3d 190 (E.D. Va. 2019)). All other opinions issued are unpublished.

Unless sealed, all of my unpublished opinions, as well as orders regarding non-dispositive matters, are uploaded to and available in the Eastern District of Virginia's CM/ECF (PACER) database under the docket page for the case. Most are also available on Westlaw, LexisNexis, and Bloomberg Law.

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.

Noce v. Clarke, No. 1:18-cv-00513-TSE-MSN, 2018 WL 7017992 (E.D. Va. Oct. 30, 2018).

FireClean LLC v. Tuohy, No. 1:16-cv-294-JCC-MSN, 2016 U.S. Dist. LEXIS 109620 (E.D. Va. June 14, 2016).

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

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

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

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

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

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

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

In accordance with 28 U.S.C. § 455(a)–(b), I ensure that no conflict of interest exists before I preside over any matter. When I took the bench as a magistrate judge, I addressed potential conflicts-of-interest with the Office of the Federal Public Defender. Before presiding over any criminal matter, my staff and I screen to identify any potential conflicts of interest, including cases involving former clients. If such a conflict is identified, I do not preside over the matter and advise the senior magistrate judge about the conflict, who reassigns the case to another magistrate judge in the Alexandria Division. These recusals occur without written order.

No party or litigant has requested that I recuse myself from a case, nor have I recused myself sua sponte except as described above regarding former clients.

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

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

I was appointed by the Honorable William W. Wilkins, Chief Judge of the United States Court of Appeals for the Fourth Circuit, to serve as Acting Federal Public Defender for the Eastern District of Virginia on November 30, 2005. I was formally selected and appointed by Chief Judge Wilkins to serve a four-year term as the Federal Public Defender for the Eastern District of Virginia on February 19, 2007. I was subsequently reappointed by the Honorable William B. Traxler Jr., Chief Judge of the United States Court of Appeals for the Fourth Circuit, on February 19, 2011 and February 19, 2015. I left the position of Federal Public Defender at the beginning of my third term to assume my duties as magistrate judge.

I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

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;

1995 – 1996
Judicial Law Clerk to the Honorable Leonie M. Brinkema

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;

1996 – 2002
Cohen, Gettings & Dunham, P.C.
2200 Wilson Boulevard, Suite 800
Arlington, Virginia 22201
Partner (2000 – 2002)
Associate (1996 – 2000)

2002 – 2015
Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, Virginia, 22314
Federal Public Defender (2007 – 2015)
Acting Federal Public Defender (2005 – 2007)
First Assistant Federal Public Defender (2002 – 2005)

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

Prior to becoming a magistrate judge, I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1996 to 2002, I worked in private practice at Cohen, Gettings & Dunham, P.C. My tenure in private practice focused primarily on litigation in the United States District Court for the Eastern District of Virginia and consisted of complex civil litigation, white collar federal criminal defense, Criminal Justice Act (CJA) appointments, and state court criminal cases. I also prosecuted misdemeanor offenses for the Town of Herndon.

From 2002 to 2015, I worked in the Office of the Federal Public Defender for the Eastern District of Virginia. As First Assistant Federal Public Defender from 2002 to 2005, I represented hundreds of clients in preliminary hearings, competency hearings, detention hearings, plea hearings, sentencing hearings, pretrial motions, bench and jury trials, probation violations, supervised release hearings, and appeals. These cases involved a wide range of federal offenses. I also had numerous supervisory responsibilities. As Acting Federal Public Defender (2005 to 2007) and Federal Public Defender (2007 to 2015), I continued to represent clients while managing offices in Alexandria, Richmond, and Norfolk. In addition to the representation of clients in district court, I also argued before the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court. Additionally, I oversaw the filing of hundreds of resentencing motions pursuant to the retroactive application of the drug guidelines.

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

As an associate and later partner at Cohen, Gettings & Dunham, P.C., I represented a wide variety of individuals and corporations in civil and criminal matters. As a member of the CJA panel for the United States District Court for the Eastern District of Virginia, I represented indigent defendants who had been charged with misdemeanor and felony offenses. In addition, I represented the Town of Herndon and prosecuted misdemeanor cases.

At the Office of the Federal Public Defender, from approximately 2002 to 2015, I represented people charged with federal crimes, many of whom were people of color and those most vulnerable and marginalized in society. After assuming leadership of the office, I focused my practice on representing clients with serious mental health issues and cases involving classified information, national security, and international issues.

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

As an attorney, I exclusively litigated. I appeared in federal and state courts frequently while working at Cohen, Gettings & Dunham, P.C., from September 1996 to February 2002, both as an associate and as a partner. As a Federal Public Defender, I practiced criminal law in federal court. I appeared in district court on a weekly basis, and I have also argued a number of appeals before the Fourth Circuit Court of Appeals and one case in the United States Supreme Court.

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: 25%
   2. criminal proceedings: 75%

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

Before becoming a magistrate judge, I tried ten cases to verdict (two as sole counsel, three as chief counsel, and five as associate counsel).

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

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

I argued *Kimbrough v. United States*, 552 U.S. 85 (2007) (No. 06-6330) (Petition for Writ of Certiorari, 2006 WL 4571655 (2006); Brief of Appellant-Petitioner, 2007 WL 2220198 (2007); Reply Brief of Petitioner, 2007 WL 2803386 (2007); Transcript of Oral Argument, 2007 WL 2847117 (2007)).

Additionally, I assisted in the preparation and briefing of *Alleyne v. United States*, 570 U.S. 99 (2013) (No. 11-9335) (Petition for Writ of Certiorari, 2012 U.S. S. Ct. Briefs LEXIS 4992 (2012); Reply Brief to Government's Brief in Opposition to Certiorari, 2012 U.S. S. Ct. Briefs LEXIS 4994 (2012); Brief of Appellant-Petitioner, 2012 U.S. S. Ct. Briefs LEXIS 4955 (2012); Reply Brief of Appellant-Petitioner, 2012 U.S. S. Ct. Briefs LEXIS 64 (2013)).

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. Brehm*, 1:11-cr-11-AJT (E.D. Va.)

Mr. Brehm, a South African citizen, was charged with assault with a dangerous weapon and assault resulting in serious bodily injury, in violation of 18 U.S.C. §§ 113(a)(3) and (a)(6), following an altercation with a British national on a NATO base in Kandahar, Afghanistan. I served as lead counsel and worked on all aspects of the defense investigation, pretrial motions practice, conditional plea, and appeal. Mr. Brehm entered a plea of guilty to one count of assault resulting in serious bodily injury. Judge Trenga sentenced him to 42 months of imprisonment.

I briefed and argued the appeal before the United States Court of Appeals for the Fourth Circuit (*United States v. Brehm*, 691 F.3d 547 (4th Cir. 2012)), in which Mr. Brehm challenged the constitutionality of the Military Extraterritorial Jurisdiction Act on the grounds that two foreign nationals engaged in illegal conduct on a multinational military base did not have a sufficient nexus to the United States to be subject to jurisdiction in federal court. The Fourth Circuit rejected the jurisdictional challenge and affirmed the conviction.

Dates of Representation: 2010 to 2012

Litigated before the United States District Court for the Eastern District of Virginia (Hon. Anthony J. Trenga).

Litigated appeal before the U.S. Court of Appeals for the Fourth Circuit (Chief Judge William Traxler, Judge Robert King, and Judge Alyson Duncan; Judge King authored the majority opinion).

Co-Counsel:

Whitney E.C. Minter
First Assistant Federal Public Defender

Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Jeffrey C. Corey
Parsons Behle & Latimer
(formerly Assistant Federal Public Defender for the Eastern District of Virginia)
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
(801) 532-1234

Opposing Counsel:

Ronald Walutes
Assistant United States Attorney
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700

2. *United States v. Mohamadi*, 1:09-cr-179-LO (E.D. Va.)

This case involved Hobbs Act robbery, firearms offenses, solicitation to commit murder for hire, murder for hire, and witness tampering, in violation of 18 U.S.C. §§ 1952, 924(c), 373, 1958, and 1512. I served as lead counsel and was involved in the defense investigation, motions practice, and jury trial of this matter. Mr. Mohamadi had been prosecuted in state court for the robberies, which resulted in a mistrial. He was subsequently charged in federal court with the same robberies and additional allegations of murder for hire and witness tampering. Mr. Mohamadi had retained multiple counsel prior to my involvement in the case. Mr. Mohamadi was convicted after trial, which was subsequently upheld on appeal.

Dates of Representation: 2010

Litigated before the United States District Court for the Eastern District of Virginia (Hon. Liam O'Grady).

Co-Counsel:

Whitney E.C. Minter
First Assistant Federal Public Defender
Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Jeffrey C. Corey
Parsons Behle & Latimer
(formerly Assistant Federal Public Defender for the Eastern District of Virginia)
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
(801) 532-1234

Opposing Counsel:

Ronald Walutes
Assistant United States Attorney
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700

3. *United States v. Ayala*, 1:08-cr-474-CMH (E.D. Va.)

Mr. Ayala was charged with second degree murder following the killing of an Afghan national outside of Kandahar, Afghanistan while serving as a contractor with a Human Terrain Team working with the U.S. military. He apprehended an individual who he learned had set his colleague on fire minutes earlier and shot him at point-blank range while the individual was in handcuffs. I served as lead counsel and supervised the investigation, defense, and mitigation strategy as well as the plea negotiation and sentencing of this emotionally-charged case. Mr. Ayala ultimately entered a plea to one count of voluntary manslaughter. We conducted an extensive mitigation investigation and argued that downward departures and a non-guideline sentence would be appropriate given the extraordinary circumstances involved in this case. Mr. Ayala was ultimately sentenced to five years of probation.

Dates of Representation: 2008 to 2009

Litigated before the United States District Court for the Eastern District of Virginia (Hon. Claude M. Hilton).

Co-Counsel:

Richard McWilliams
Assistant Federal Public Defender
District of Nebraska
(formerly Office of the Federal Public Defender, Eastern District of Virginia)
222 South Fifteenth Street, Suite 300N
Omaha, NE 68102
(855) 690-9458

Opposing Counsel:

Michael Rich (deceased)
Assistant United States Attorney
Eastern District of Virginia

4. *Kimbrough v. United States*, 552 U.S. 85 (2007)

While I had been supervising the general strategy of challenging the crack/powder disparity following the decision in *Booker v. United States*, 543 U.S. 220 (2005), my specific involvement in this case arose after certiorari was granted. I argued before the United States Supreme Court on behalf of the petitioner, Mr. Kimbrough, regarding the racial disparity of the 100:1 crack/powder ratio and the authority of district courts to impose below-guidelines sentences in light of *Booker*, based upon a categorical rejection of the advisory guideline range. I presented the oral argument, assisted in drafting the briefs to the Supreme Court, and supervised the team effort of the federal defender and indigent defense community regarding sentencing litigation strategy. The Supreme Court ruled in favor of Mr. Kimbrough, reversed the Fourth Circuit's rejection of the district court's below-guidelines sentence, and remanded the case to the district court for imposition of the original sentence.

Dates of Representation: 2007

Litigated before the United States Supreme Court (Chief Justice Roberts, Justice Scalia, Justice Stevens, Justice Kennedy, Justice Thomas, Justice Souter, Justice Breyer, Justice Ginsberg, and Justice Alito).

Co-Counsel:

Geremy Kamens
Federal Public Defender
Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Frances Pratt
Assistant Federal Public Defender
Office of the Federal Public Defender for the Eastern District of Virginia
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Alexandria, VA 22314
(703) 600-0800

Kenneth Troccoli
Senior Litigator
Office of the Federal Public Defender for the Eastern District of Virginia

1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Opposing Counsel:

Michael Dreeben
O'Melveny & Myers (formerly Deputy Solicitor General)
1625 Eye Street, Northwest
Washington, DC 20006
(202) 383-5300

5. *United States v. Arriaza-Alvarenga*, 1:06-cr-434-TSE-2 (E.D. Va.)

I served as co-counsel in the trial of Mr. Arriaza-Alvarenga, who was charged with conspiracy to distribute, possession with intent to distribute, possession aboard an aircraft, and importation of 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 846, 952, 955 and 960. The case involved a courier from El Salvador, who arrived at Dulles International Airport with more than 500 grams of cocaine secreted inside of votive candles. Mr. Arriaza-Alvarenga denied knowledge of the drugs. I was involved in the defense investigation, motions practice, and trial of the matter. He was acquitted on all charges following a jury trial.

Dates of Representation: 2007

Litigated before the United States District Court for the Eastern District of Virginia (Hon. T. S. Ellis, III).

Co-Counsel:

Geremy Kamens
Federal Public Defender
Office of the Federal Public Defender for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Opposing Counsel:

John C. Lynch
Troutman Pepper
(formerly Special Assistant United States Attorney, Eastern District of Virginia)
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
(757) 687-7500

6. *United States v. Luangrath*, 1:04-cr-202-JCC (E.D. Va.)

Mr. Luangrath was charged with possession of a firearm by a person who is an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). I served as sole counsel for Mr. Luangrath and filed a motion to suppress statements based upon his unconstitutional questioning by police following his invocation of the right to counsel during custodial interrogation. Judge Cacheris granted the motion and suppressed the statements relating to drug use. The government subsequently dismissed the case.

Dates of representation: 2004

Litigated before the United States District Court for the Eastern District of Virginia (Hon. James C. Cacheris).

Opposing Counsel:

Erik Barnett
Compliance Managing Director, HSBC
(formerly Assistant United States Attorney, Eastern District of Virginia)
8 Canada Square
London, E14 5HQ
United Kingdom
44(0) 20 7991 8888

7. *United States v. Lawson*, 1:02-cr-302-GBL (E.D. Va.)

Mr. Lawson was charged with conspiracy to commit armed bank robbery, armed bank robbery, and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 371, 2113(a) & (d), and 924(c)(1)(A)(ii). I served as sole counsel and participated in the defense investigation, motions practice, and trial of this matter. Mr. Lawson was convicted following a jury trial.

Dates of Representation: 2002

Litigated before the United States District Court for the Eastern District of Virginia (Hon. Gerald Bruce Lee).

Opposing Counsel:

Ronald Walutes
Assistant United States Attorney
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700

Michael Rich (deceased)
Assistant United States Attorney
Eastern District of Virginia

8. *Jackson v. Associated Luxury Hotels, Inc., et al.*, 2000-CA-005102B (D.C. Super. Ct. 2000)

This matter involved a lawsuit brought by Ms. Jackson against Associated Luxury Hotels, Inc., for breach of contract and employment discrimination in violation of Title VII and the ADEA following her termination. Ms. Jackson alleged that she was unlawfully terminated based on her age and gender and replaced with a younger, male employee in violation of the terms of her contract. I served as lead counsel for Ms. Jackson and managed all aspects of the litigation, which included extensive discovery, multiple depositions and pretrial motions practice. The case favorably settled following denial of summary judgment.

Dates of Representation: 2000 to 2002

Co-Counsel:

Joel Dahnke (retired)
Formerly Cohen Gettings

Opposing Counsel:

Christopher Nolan (contact information not available)

Frank E. Brown, Jr.
Saunders & Brown, PLC
8200 Greensboro Drive, Suite 900
McLean, Virginia 22201
(703) 506-1022

James M. Saunders
Saunders & Brown, PLC
8200 Greensboro Drive, Suite 900
McLean, Virginia 22201
(703) 506-1018

9. *United States v. Hernandez*, 1:98-cr-153-CMH-1 (E.D. Va.)

Mr. Hernandez, along with his spouse, brother, and company, was charged in a 38-count indictment with conspiracy to defraud the government, major fraud against the government, and obstruction of justice in connection with his family-owned business which allegedly submitted false invoices to the government. Along with co-counsel, I was responsible for the defense of my client, which included the preparation of and

participation in pre- and post-trial motions, direct and cross examination of witnesses, sentencing, and appeal of the case. Following a week-long jury trial, Mr. Hernandez was convicted and sentenced to 27 months of imprisonment.

Dates of Representation: 1998 to 1999

Litigated before the United States District Court for the Eastern District of Virginia (Hon. Claude M. Hilton).

Co-Counsel:

Frank W. Dunham, Jr. (deceased)

Opposing Counsel:

Thomas McQuillan (deceased)
(formerly Assistant United States Attorney for the Eastern District of Virginia)

10. *United States v. Parris*, 1:99-cr-351-TSE (E.D. Va.)

Mr. Parris, a small-business owner, was charged in a six-count indictment with conspiracy, embezzlement from an ERISA plan, money laundering, and making false statements related to an ERISA plan, in connection with allegations that he illegally diverted funds from his company's pension plan to meet payroll and other business-related expenses. I served as co-counsel with Frank Dunham and participated in all aspects of the defense of Mr. Parris, including the preparation of pre- and post-trial motions, presenting the opening statement, and handling direct and cross-examination of witnesses. Judge Ellis dismissed the money laundering charges on a motion for judgment of acquittal under Rule 29, and Mr. Parris was subsequently convicted of conspiracy and making a false statement after a week-long trial. He was acquitted of embezzlement and engaging in monetary transactions involving specified unlawful activity. Judge Ellis sentenced Mr. Parris to 21 months of imprisonment.

Dates of Representation: 1999

Litigated before the United States District Court for the Eastern District of Virginia (Hon. T.S. Ellis, III).

Co-Counsel:

Frank W. Dunham, Jr. (deceased)

Opposing Counsel:

Daniel Locke Bell (To the best of my knowledge, Mr. Bell has retired or relocated. I do not have his current contact information.)

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

    In addition to my work in the courtroom, I have pursued a variety of legal activities that do not directly involve litigation. I have devoted substantial time and effort to the pursuit of criminal justice reform as a national advocate for the federal defender program. These activities included testifying before the following congressional and judiciary committees on a variety of topics: the Senate Judiciary Subcommittee on Bankruptcy and the Courts (2013) (federal defender funding crisis), the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security (2008) (crack/powder disparity), and the United States Sentencing Commission (2009, 2010, 2011, and 2012) (25th Anniversary Regional Hearings, Mandatory Minimum Report, crack retroactivity, and *Booker* Hearing).

    I also helped establish the first drug court in the Eastern District of Virginia in 2009, and I now serve as one of the magistrate judges presiding over the Alexandria Re-entry and Recovery Court (ARRC) in the Alexandria Division. The ARRC program is a post-conviction re-entry program that requires participants to meet with a magistrate judge on a weekly basis under the supervision of a team of assistant federal public defenders, assistant United States Attorneys, probation officers, and treatment providers who work collaboratively to provide drug treatment and counseling, job training, and other services to defendants with a history of chronic substance abuse.

    Additionally, as an attorney, I engaged in advocacy for clients that did not relate directly to their trial or appellate matters. I assisted numerous incarcerated clients with concerns related to the conditions of their confinement, including access to mental health and other treatment programs, the correct calculation of release dates, and other post-conviction issues through non-litigation advocacy and outreach to the Bureau of Prisons. Finally, as a judge, I have also developed substantial expertise outside the courtroom in the area of mediation, having resolved numerous cases through settlement covering the full spectrum of civil litigation that arises in the Eastern District of Virginia.

    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.

    I have no anticipated receipts of deferred income from any source.

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 played in musical groups for many years, but I have not taken any compensation for those activities since taking the bench on March 2, 2015.

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 Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        I am not aware of any specific potential conflicts-of-interest that would arise as a result of family members, parties, affiliations, categories of litigation, or financial arrangements. When I took the bench as a magistrate judge, I addressed potential conflicts-of-interest with the Office of the Federal Public Defender. I consulted the judicial canons of ethics and made arrangements with my colleagues and the Clerk's Office to identify any potential conflicts, including cases involving former clients. There have been very few instances where any issue has arisen.

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

I would follow the same procedures that I implemented when I became a magistrate judge. I would address any potential conflict-of-interest that arises using the procedures set out by the Court and the canons of ethics.

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

I have dedicated a substantial portion of my career to providing legal services to the most vulnerable people in Northern Virginia charged with federal crimes. As an attorney in private practice, I joined the Criminal Justice Act Panel for the Eastern District of Virginia and sought out opportunities to provide pro bono assistance to clients who could not afford to hire our law firm. As Federal Public Defender, I represented people who faced the most severe consequences the criminal justice system can impose. Many of them had been alienated from their families and from society or suffered from mental illness. I have also sought to serve the disadvantaged by speaking on behalf of the federal defender community as a witness before several congressional and judicial committees. In 2008, I co-founded the Frank Dunham Federal Criminal Defense Conference to honor the memory of Frank Dunham, my law partner and the first Federal Public Defender for the Eastern District of Virginia, and to provide CJA panel members from across Virginia with continuing legal education specializing in federal criminal defense issues.

26. **Selection Process**:

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

On December 18, 2020, I submitted an application to Senators Mark Warner and Tim Kaine. On March 18, 2021, I interviewed with the Senators' Committee. Based on the committee's recommendation, I was interviewed by Senators Warner and Kaine on April 12, 2021. On April 30, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in

contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Sarala Vidya Nagala

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

   United States District Judge for the District of Connecticut

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
   District of Connecticut
   157 Church Street, 25th Floor
   New Haven, Connecticut 06510

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

   1983; Oakes, North Dakota

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.

   2005 – 2008, University of California, Berkeley, School of Law; J.D., 2008
   2001 – 2005, Stanford University; B.A. with Distinction and Interdisciplinary Honors, 2005

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

   2012 – present
   United States Attorney's Office for the District of Connecticut
   157 Church Street, 25th Floor
   New Haven, Connecticut 06510

Deputy Chief, Major Crimes Unit (November 2017 – present)
Deputy Chief, Major Crimes and National Security Unit (November 2016 – November 2017)
Assistant United States Attorney (2012 – present)

2017 – 2019
Yale Law School
127 Wall Street
New Haven, Connecticut 06520
Visiting Clinical Lecturer in Law (Prosecution Externship)

2009 – 2012
Munger, Tolles, & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Associate

2008 – 2009
The Honorable Susan P. Graber
United States Court of Appeals for the Ninth Circuit
700 Southwest 6th Avenue
Portland, Oregon 97204
Law Clerk

January 2008 – May 2008
United States Attorney's Office for the Northern District of California
1301 Clay Street
Oakland, California 94612
Law Student Intern

August 2007 – May 2008
Berkeley Center for Law and Technology
356 Boalt Hall
Berkeley, California 94720
Graduate Student Researcher

January 2007 – May 2008
University of California, Berkeley, School of Law
Stephen Bundy, Professor of Law
312 Boalt Hall
Berkeley, California 94720
Research Assistant

Summer 2007
Munger, Tolles, & Olson LLP
350 South Grand Avenue, 50th Floor

Los Angeles, California 90071
Summer Associate

Summer 2007
Quinn Emanuel Urquhart & Sullivan, LLP
50 California Street, #22
San Francisco, California 94111
Summer Associate

Summer 2006
The Honorable Carlos Moreno
Associate Justice, Supreme Court of California
350 McAllister Street
San Francisco, California 94102
Law Student Intern

Summer 2006
Samuelson Law, Technology, & Public Policy Clinic
University of California, Berkeley, School of Law
396 Simon Hall
Berkeley, California 94720
Graduate Student Researcher

Summer 2005
Hewlett Packard
1100 New York Avenue, Northwest, Suite 600
Washington, District of Columbia 20005
Eben Tisdale Fellow

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

   I did not serve in the military. I was not required to register for 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.

   United States Attorney's Office for the District of Connecticut's "Standing Tall" Award (2018)

   Community Service Award, Muslim Community of Connecticut (2017)

   Executive Office for United States Attorneys Director's Award for Superior Performance as a Criminal Assistant United States Attorney (2015)

United States Attorney's Office for the District of Connecticut's "Michael Collins" Award (2015)

ACLU of Southern California's Courageous Advocacy Award (2011)

Order of the Coif Academic Honor Society (inducted 2008)

California Law Review, Member (2007 – 2008)

University of California, Berkeley, School of Law Prosser Prize, Introduction to Intellectual Property (2006)

Advocacy Award in First-Year Writing Program (2006)

University of California, Berkeley, School of Law Prosser Prize, Civil Procedure (2005)

Phi Beta Kappa Academic Honor Society (inducted 2005)

Stanford University Lloyd W. Dinkelspiel Award for Outstanding Contributions to Undergraduate Education (2005)

Stanford University Ann C. Seminara Award for Outstanding Public Policy Senior (2005)

Eben Tisdale Fellowship in Public Policy (2005)

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.

   Connecticut Bar Association Committee on Human Trafficking, Member (2018 – present)

   South Asian Bar Association of Connecticut, Member (2013 – present)

   The Bar Association of San Francisco (2010 – 2012)

10. **Bar and Court Admission**:

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

       California, 2008

       There have been no lapses in my California bar 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, 2015
U.S. Court of Appeals for the Second Circuit, 2012
U.S. Court of Appeals for the Ninth Circuit, 2009
U.S. Court of Appeals for the Federal Circuit, 2010
U.S. District Court for the Central District of California, 2009
U.S. District Court for the Northern District of California, 2009
U.S. District Court for the Southern District of California, 2011

There have been no lapses in membership. Consistent with District of Connecticut practice for government lawyers who are barred out of state, I have been admitted pro hac vice to the U.S. District Court for the District of Connecticut since 2012.

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.

Yale Law School Early Learning Center, Parent Board Member (2019 – 2020)
Yale University, Pauli Murray College, Fellow (2017 – 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 organizations listed in response to 11a do not currently and did not formally discriminate on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

With Seema Patel, *Public Policy Considerations of Water Damage Exclusions in Hurricane Insurance Policies* (Apr. 2006). Paper written for "Disasters and the Law" course at University of California, Berkeley, School of Law, Professor Dan Farber, Spring 2006 Term. Copy supplied.

"OM": Hinduism in American Pop Culture: Global Strategy or Sacrilegious Mistake, published in Ann Waters, Global Exchange: Reading and Writing in a World Context, Stanford University (2005). Copy supplied.

India's Story of Success: Promoting the Information Technology Industry, Stanford Journal of Internal Relations, Emerging Powers, Vol. VI, No. 1 (Winter 2005). Copy supplied.

How to Avoid the Beggars, published in Vagabond, Stanford University travel journal, Vol. 1, Issue 1 (2004) and Voices: Rhythms Literary Magazine, Stanford University (Feb. 21, 2004). Copies 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.

January 19, 2021: Presenter (Virtual), "Federal Anti-Human Trafficking Efforts," Response to Recovery Conference, Connecticut Department of Children and

Families. Presentation supplied.

September 24, 2020: Guest Speaker (Virtual), University of Connecticut School of Law Civil Rights Externship Course, co-taught by various Assistant U.S. Attorneys. I spoke about human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut, 06105.

March 4, 2020: Panelist, "Partnership to Combat Modern Slavery Symposium," Grace Farms Foundation, New Canaan, Connecticut. Presentation and press release supplied.

June 14, 2019: Award Presenter, U.S. Attorney's Office Law Enforcement Awards Ceremony, New Haven, Connecticut. Prepared remarks supplied.

May 22, 2019: Presenter, "Federal Anti-Human Trafficking Efforts," Response to Recovery Conference, Connecticut Department of Children and Families, Central Connecticut State University, New Britain, Connecticut. Presentation supplied.

April 17, 2019: Presenter, "Federal Labor Trafficking Red Flags and Investigations," for U.S. Department of Labor, Occupational Safety and Health Administration investigators, Hartford, Connecticut. Presentation supplied.

April 12, 2019: Presenter, Human Trafficking Investigations for Hotel Employees, Holiday Inn, Bridgeport, Connecticut. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Holiday Inn is 1070 Main Street, Bridgeport, Connecticut 06604.

March 25, 2019: Presenter, Human Trafficking Investigations for Hotel Employees Training, Residence Inn by Marriott Hartford. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Residence Inn by Marriott Hartford is 680 Cromwell Avenue, Rocky Hill, Connecticut, 06067.

March 25, 2019: Presenter, Human Trafficking Investigations for Hotel Employees Training, Best Western Hartford Hotel & Suites. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Best Western Hartford Hotel & Suites is 185 Brainard Road, Hartford, Connecticut 06114.

March 21, 2019: Presenter, "Federal Sex Trafficking Cases: Trial Preparation and Trial," for Employees of the Department of Children and Families,

Connecticut Police Officer Standards and Training Council (Connecticut Police Academy), Meriden, Connecticut. Presentation supplied.

February 27, 2019: Presenter, "Federal Labor Trafficking Red Flags and Investigations," for U.S. Department of Labor, Occupational Safety and Health Administration investigators, Bridgeport, Connecticut. Presentation supplied.

December 19, 2018: Presenter, Human Trafficking Investigations for Hotel Employees Training, Fairfield Inn by Marriott Hotel, Windsor Locks, Connecticut. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Fairfield Inn by Marriott Hotel is 2 Loten Drive, Windsor Locks, Connecticut 06096.

December 13, 2018: Presenter, Human Trafficking Investigations for Hotel Employees Training, Wyndham Southbury Hotel, Southbury, Connecticut. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Wyndham Southbury Hotel is 1284 Strongtown Road, Southbury, Connecticut 06488.

October 23, 2018: Presenter, "Ending Sexual Harassment in Housing: Education and Outreach Initiative," Connecticut Fair Housing Center, Hartford, Connecticut. Presentation supplied.

September 19, 2018: Presenter, Human Trafficking Investigations for Hotel Employees Training, Howard Johnson Hotel, Milford, Connecticut. The presentation was on federal sex trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of sex trafficking. I have no notes, transcript, or recording. The address for the Howard Johnson Hotel was 1052 Boston Post Road, Milford, Connecticut 06460. This hotel has since closed.

April 7, 2018: Panelist, Yale Child Study Center and Yale Undergraduate Students for UNICEF, "2018 Conference on Child Trafficking," Yale University, New Haven, Connecticut. I spoke generally about federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for the Yale Child Study Center is 230 S. Frontage Road, New Haven, Connecticut 06519. The address for Yale Undergraduate Students at UNICEF is 67 High Street, New Haven, Connecticut 06511.

November 6, 2017: Presenter, Cultural Competency Training, New Britain Police Department, New Britain, Connecticut. Presentation supplied.

October 23, 2017: Presenter, Cultural Competency Training, New Britain Police Department, New Britain, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

October 3, 2017: Presenter, "Federal Anti-Human Trafficking Efforts," Connecticut State's Attorney's Meeting, Rocky Hill, Connecticut. Presentation supplied.

September 14, 2017: Guest Speaker, University of Connecticut School of Law Civil Rights Externship Course, co-taught by various Assistant U.S. Attorneys, Hartford, Connecticut. Presentation supplied.

July 11, 2017: Presenter, "Federal Labor Trafficking Red Flags and Investigations," Connecticut Department of Labor, Wethersfield, Connecticut. Presentation supplied.

June 20, 2017: Panelist, National Student Leadership Conference Law and Advocacy Class, Yale University, New Haven, Connecticut. Along with other panelists who worked in federal criminal law, I discussed my educational and career path and my work at the United States Attorney's Office. I have no notes, transcript, or recording. The address for the National Student Leadership Conference is 320 West Ohio Street, Suite 4W, Chicago, Illinois, 60654.

June 14, 2017: Award Presenter, U.S. Attorney's Office Law Enforcement Awards Ceremony. Prepared remarks and press coverage supplied.

June 7, 2017: Presenter, "Federal Anti-Human Trafficking Efforts," The Center for Family Justice, Bridgeport, Connecticut. Presentation supplied.

May 5, 2017: Speaker, "Hate Crimes," High School in the Community, New Haven, Connecticut. The presentation, which was for high school students, was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for High School in the Community is 175 Water Street, New Haven, Connecticut 06511.

April 27, 2017: Presenter, Cultural Competency Training, Torrington Police Department, Torrington, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

April 24, 2017: Presenter, Cultural Competency Training, Torrington Police Department, Torrington, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

April 13, 2017: Presenter, "Federal Hate Crimes," Connecticut Police Officer Standards and Training Council (Connecticut Police Academy), Meriden, Connecticut. Presentation supplied.

April 11, 2017: Presenter, Cultural Competency Training, Torrington Police Department, Torrington, Connecticut. I used the same presentation that was

provided for the Cultural Competency Training on November 6, 2017.

April 4, 2017: Presenter, Human Trafficking for Hotels, Quinnipiac University Law School, North Haven, Connecticut. I spoke about federal human trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of human trafficking. I have no notes, transcript, or recording. The address for Quinnipiac University Law School is 370 Bassett Road, North Haven, Connecticut 06473.

March 23, 2017: Presenter, Cultural Competency Training, Hamden Police Department, Hamden, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

March 20, 2017: Presenter, Cultural Competency Training, Hamden Police Department, Hamden, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

March 13, 2017: Presenter, Cultural Competency Training, Hamden Police Department, Hamden, Connecticut. I used the same presentation that was provided for the Cultural Competency Training on November 6, 2017.

February 28, 2017: Presenter, "Federal Anti-Human Trafficking Efforts," Transportation Safety Administration, Windsor Locks, Connecticut. Presentation supplied.

January 31, 2017: Speaker, Federal Human Trafficking Training, St. Francis Hospital, Hartford, Connecticut. A Special Agent of the FBI and I presented to hospital workers, including emergency room personnel, on the signs of human trafficking. I have no notes, transcript, or recording. The address for St. Francis Hospital is 114 Woodland Street, Hartford, Connecticut 06105.

January 18, 2017: Presenter, "Federal Anti-Human Trafficking Efforts," Connecticut Police Officer Standards and Training Council (Connecticut Police Academy), Meriden, Connecticut. Presentation supplied.

January 12, 2017: Speaker, "Human Trafficking Awareness," event sponsored by Connecticut Lodging Association. The presentation was on federal human trafficking investigations and prosecutions, with a focus on how hotel workers can identify indicators of human trafficking. I have no notes, transcript, or recording, but press coverage supplied. The address for the Connecticut Lodging Association is P.O. Box 1576, New Haven, Connecticut 06506.

December 1, 2016: Presenter, "Federal Anti-Human Trafficking Efforts," Connecticut Chief State's Attorney's Office, Rocky Hill, Connecticut. Presentation supplied.

November 9, 2016: Trainer, "Train the Trainer" Program on Human Trafficking hosted by Connecticut Department of Children and Families, Connecticut Police Officer Standards and Training Council (Connecticut Police Academy). The presentation was on federal human trafficking investigations and prosecutions, with an aim toward training officers to conduct human trafficking training events for their own departments. I have no notes, transcript, or recording. The address for the Connecticut Police Academy is 285 Preston Avenue, Meriden, Connecticut 06450.

September 22, 2016: Guest Speaker, University of Connecticut School of Law Civil Rights Externship Course, co-taught by various Assistant U.S. Attorneys, Hartford, Connecticut. Presentation supplied.

September 22, 2016: Guest Speaker, "Anti-Human Trafficking in the Global Context," course taught by Dr. Casey King, Director of the Capstone Program at the Jackson Institute for Global Affairs, Yale University, New Haven, Connecticut. The presentation was on federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for the Jackson Institute for Global Affairs is Horchow Hall, 55 Hillhouse Avenue, New Haven, Connecticut 06511.

September 15, 2016: Presenter, Cultural Competency Training at Hartford Police Academy, Hartford, Connecticut. Presentation supplied.

July 28, 2016: Presenter, "Federal Hate Crimes and Civil Rights Laws," FBI Future Law Enforcement Youth Academy, Yale University, New Haven, Connecticut. Presentation supplied.

July 28, 2016: Presenter, "Federal Human Trafficking Training Investigations and Prosecutions," for U.S. Department of Labor Wage and Hour Division, New Haven, Connecticut. I spoke about federal human trafficking investigations and prosecutions, including both labor and sex trafficking. I have no notes, transcript, or recording. The address for the U.S. Department of Labor's Wage and Hour Division is 150 Court Street, New Haven, Connecticut 06510.

June 24, 2016: Presenter, "Federal Human Trafficking Training Investigations and Prosecutions," Connecticut Police Officer Standards and Training Council (Connecticut Police Academy). I spoke about federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for the Connecticut Police Academy is 285 Preston Avenue, Meriden, Connecticut 06450.

June 17, 2016: Speaker, "Religious and Cultural Awareness," Hartford Seminary, Hartford, Connecticut. I spoke about federal hate crimes and civil rights laws. I have no notes, transcript, or recording, but press coverage supplied. The address for the Hartford Seminary is 77 Sherman Street, Hartford, Connecticut 06105.

June 8, 2016: Presenter, Hate Crimes Presentation for College and University Police Department Officers, Yale West Campus, Orange, Connecticut. The presentation was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for Yale West Campus is 100 West Campus Drive, Orange, Connecticut 06477.

May 31, 2016: Speaker, "Protecting Your House of Worship," Al-Madany Islamic Center of Norwalk, Norwalk, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address of Al-Madany Islamic Center of Norwalk is 1 Union Park South, Norwalk, Connecticut 06850.

May 20, 2016: Speaker, United States Attorney's Office Civil Rights Summit. I briefly addressed Muslim, Sikh, and Arab community leaders at the Summit. I have no notes, transcript, or recording, but press coverage supplied. The address for the United States Attorney's Office is 157 Church Street, 25th Floor, New Haven, Connecticut 06510.

May 16, 2016, Speaker, Committee for Hartford Area Against Trafficking Meeting, The Salvation Army – Hartford Citadel, Hartford, Connecticut. The presentation was on federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for The Salvation Army – Hartford Citadel is 217 Washington Street, Hartford, Connecticut 06106.

May 4, 2016: Presenter, "Protecting Your House of Worship," Masjid Al Mustafa, Waterbury, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for Masjid Al Mustafa is 95 Schraffts Drive, Waterbury, Connecticut 06705.

May 1, 2016: Presenter, "Protecting Your House of Worship," Guru Tegh Bahudar Ji Foundation Sikh Temple, Norwalk, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for Guru Tegh Bahudar Ji Foundation Sikh Temple is 622 West Avenue, Norwalk, Connecticut 06850.

April 20, 2016: Speaker, U.S. Attorney's Office Multi-Cultural Advisory Council Launch with Muslim and Sikh Community Leaders. I welcomed attendees and spoke about the objectives of the Multi-Cultural Advisory Council, which included advising the U.S. Attorney about issues of concern to these specific communities. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 157 Church Street, 25th Floor, New Haven, Connecticut 06510.

April 9, 2016: Speaker, "Protecting Your House of Worship," Gurdwara Nanak

Darbar Sikh Temple, Southington, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. PowerPoint and press coverage supplied.

April 7, 2016: Presenter, "Domestic Minor Sex Trafficking: Raising Awareness to Empower Communities," delivered at "Confronting Slavery: Venture Smith to the Present" Conference, Connecticut Department of Energy and Environmental Protection, Hartford, Connecticut. Presentation supplied.

March 30, 2016: Speaker, Norwalk Pathways Academy, Norwalk, Connecticut. The presentation, which was for a small group of high school students, was on federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for Norwalk Pathways Academy is 350 Main Avenue, Norwalk Connecticut 06851.

March 26, 2016: Speaker, "Protecting Your House of Worship," Masjid Al-Rawdah, Meriden, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for Masjid Al-Rawdah is 189 East Main Street, Meriden, Connecticut 06450.

March 22, 2016: Panelist, YWCA "Community Matters Conversation on Human Trafficking," Hartford, Connecticut. I spoke about federal human trafficking investigations and prosecutions. I have no notes, transcript, or recording, but press coverage supplied. The address for the YWCA is 135 Broad Street, Hartford, Connecticut 06105.

March 9, 2016: Presenter, "Train the Trainer" Program for Cultural Competency Training for Police Departments, Farmington Valley American Muslim Center, Avon, Connecticut. I spoke about the training program my office had launched for police departments on Islam and Sikhism. I have no notes, transcript, or recording. The address for the Farmington Valley American Muslim Center is 35 Harris Road, Avon, Connecticut 06001.

February 18, 2016: Presenter, "Train the Trainer" Program for Cultural Competency Training for Police Departments. I spoke about the training program my office had launched for police departments on Islam and Sikhism. I have no notes, transcript, or recording. This presentation took place at the U.S. Attorney's Office; the address is 157 Church Street, 25th Floor, New Haven, Connecticut 06510.

February 11, 2016: Panelist, YWCA "Community Matters" Panel Series, "#Islamophobia: Who is Spreading Anti-Islam Prejudice and What Can Be Done?," YWCA, Hartford, Connecticut. The presentation was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for the YWCA is 135 Broad Street, Hartford, Connecticut 06105.

February 6, 2016: Speaker, "Protecting Your House of Worship," Islamic Center of Connecticut, Windsor, Connecticut. I spoke to the congregation about federal hate crimes and civil rights laws. I have no notes, transcript, or recording, but press coverage supplied. The address for the Islamic Center of Connecticut is 40 White Rock Drive, Windsor, Connecticut 06095.

January 28, 2016: Speaker, "Creating Positive Engagement with Muslim Students and Families," sponsored by the Anti-Defamation League of Connecticut and the Connecticut Association of Schools, Cheshire, Connecticut. To the best of my recollection, I spoke generally about federal civil rights and hate crimes laws. I have no notes, transcript, or recording. The address for the Anti-Defamation League of Connecticut I 1952 Whitney Avenue, #6, Hamden, Connecticut 06517. The address for the Connecticut Association of Schools is 30 Realty Drive, Cheshire, Connecticut 06410.

January 13, 2016: Speaker, Western Area Regional Police Chiefs Meeting, Western Area Regional Police Chiefs Association, Middlebury, Connecticut. I spoke about the recently-formed Connecticut Human Trafficking Task Force and about trainings available to police departments regarding human trafficking. I have no notes, transcript, or recording. The Western Area Regional Police Chiefs Association does not appear to have a mailing address.

January 4, 2016: Speaker, Synergy High School Class, East Hartford, Connecticut. At this event, another Assistant U.S. Attorney and I spoke to a group of students at an alternative high school. I believe the topics included the criminal justice system and careers in law enforcement/law. I have no notes, transcript, or recording. The address for Synergy High School is 40 Butternut Drive, East Hartford, Connecticut 06118.

December 19, 2015: Panelist, Anti-Bullying and Outreach Event, Baitul Aman House of Peace Mosque, Meriden, Connecticut. My presentation was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording, but press coverage supplied. The address for the Baitul Aman House of Peace Mosque, Meriden, Connecticut is 410 Main Street, Meriden, Connecticut 06451.

December 8, 2015: Guest Speaker, "Big Data and Global Policies," course taught by Dr. Casey King, Director of the Capstone Program at the Jackson Institute for Global Affairs, Yale University, New Haven, Connecticut. I spoke to the class about human trafficking investigations and prosecutions. I have no notes, transcript, or recording. The address for the Jackson Institute for Global Affairs is Horchow Hall, 55 Hillhouse Avenue, New Haven, Connecticut 06511.

December 6, 2015: Panelist, Anti-Bullying and Outreach Event, Islamic Center of Connecticut, Windsor, Connecticut. My presentation was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The

address for the Islamic Center of Connecticut is 40 White Rock Drive, Windsor, Connecticut 06095.

November 18, 2015: Panelist, Pre-Law Panel, Branford College, Yale University, New Haven, Connecticut. I spoke to undergraduate students about my educational and career path. I have no notes, transcript, or recording. The address for Branford College, Yale University, is 74 High Street, New Haven, Connecticut 06511.

October 23, 2015: Moderator, Class of 2005 Class Panel, Stanford University Class of 2005 Reunion, Stanford Alumni Association, Stanford, California. I served as one of two moderators of a panel on which six of my college classmates discussed their career and personal paths since graduation. I have no notes, transcript, or recording. The address of the Stanford Alumni Association is Frances C. Arrillaga Alumni Center, 326 Galvez Street, Stanford, California, 94305.

July 17, 2015: Panelist, National Student Leadership Conference Law and Advocacy Class, Yale University, New Haven, Connecticut. I discussed my educational and career path, along with my work at the United States Attorney's Office. I have no notes, transcript, or recording. The address for the National Student Leadership Conference is 320 West Ohio Street, Suite 4W, Chicago, Illinois, 60654.

June 24, 2015: Award Presenter, U.S. Attorney's Office Law Enforcement Awards Ceremony. Prepared remarks supplied.

May 27, 2015: Panelist, "Women in Public Safety," CREC Public Safety Academy, Enfield, Connecticut. I discussed my educational and career path and my work at the United States Attorney's Office. I have no notes, transcript, or recording. The address for CREC Public Safety Academy is 1617 King Street, Enfield, Connecticut 06082.

May 15, 2015: Panelist, Anti-Bullying and Outreach Event, Madina Academy, Windsor, Connecticut. My presentation was on federal hate crimes and civil rights laws. I have no notes, transcript, or recording. The address for Madina Academy is 519 Palisado Avenue, Windsor, Connecticut 06095.

October 20, 2014: Group Discussion Facilitator, "Dinner and a Movie," University of Bridgeport, Bridgeport, Connecticut. Another Assistant U.S. Attorney, a member of the Department of Justice's Community Relations Service, and I facilitated small-group discussions after a screening of the film, "Inside Islam: What a Billion Muslims Really Think." I have no notes, transcript, or recording. The address for the University of Bridgeport is 126 Park Avenue, Bridgeport, Connecticut 06604.

September 5, 2014: Panelist, Diversity Training, Central Connecticut State University, New Britain, Connecticut. To the best of my recollection, another Assistant U.S. Attorney, a member of the Department of Justice's Community Relations Service, and I spoke to members of the faculty and staff about how to engage with Arab, Muslim, and Sikh students. I have no notes, transcript, or recording. The address for Central Connecticut State University is 1615 Stanley Street, New Britain, Connecticut 06050.

June 18, 2014: Panelist, National Student Leadership Conference Law and Advocacy Class, Yale University, New Haven, Connecticut. Along with other panelists who worked in federal criminal law, I discussed my educational and career path and my work at the United States Attorney's Office. I have no notes, transcript, or recording. The address for the National Student Leadership Conference is 320 West Ohio Street, Suite 4W, Chicago, Illinois, 60654.

April 10, 2014: Speaker, Quinnipiac Law School, possibly Women's Law Society, North Haven, Connecticut. I do not recall the nature or topic of this event, but I believe it may have been an event with the Women's Law Society in which I discussed my educational and career path with female law students. I have no notes, transcript, or recording. Quinnipiac Law School is located at 370 Bassett Road, North Haven, Connecticut 06473.

April 7, 2014: Speaker, Federal Law Enforcement Career Panel, Gateway Community College, New Haven, Connecticut. This event was organized by the U.S. Attorney's Office and was intended to expose college students from around the state to careers in federal law enforcement. I may have delivered introductory remarks, though I do not recall precisely. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 157 Church Street, 25th Floor, New Haven, Connecticut 06510.

February 25, 2014: Panelist, University of Connecticut School of Law Women's Law Association Event, Hartford, Connecticut. I discussed my educational and career path with female law students. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

December 5, 2013: Speaker, South Asian Bar Association of Connecticut Annual Awards Dinner, Hartford, Connecticut. Remarks supplied.

November 14, 2013: Speaker, Internet Safety for School-Aged Children, Branford High School, Branford, Connecticut. The presentation was on Internet safety. I have no notes, transcript, or recording. The address for Branford High School is 185 East Main Street, Branford, Connecticut 06405.

October 9, 2013: Speaker, Western New England University School of Law "Color of Law" Roundtable Series, Springfield, Massachusetts. I spoke to a small

group of law students about my educational and career path. I have no notes, transcript, or recording. The address of Western New England University School of Law is 1215 Wilbraham Road, Springfield, Massachusetts 01119.

May 2, 2013: Speaker, FBI Citizens Academy Graduation Ceremony, Federal Bureau of Investigation, New Haven, Connecticut. Notes supplied.

April 16, 2013: Speaker, Federal Law Enforcement Career Panel, Gateway Community College, New Haven, Connecticut. This event was organized by the U.S. Attorney's Office and was intended to expose college students from around the state to careers in federal law enforcement. I delivered introductory remarks. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 157 Church Street, 25th Floor, New Haven, Connecticut 06510.

October 11, 2011: Panelist, "The Intersection of Civil Rights and Crime Control," Reed Smith, San Francisco, California. This event was organized by the San Francisco Asian American Bar Association's Civil Rights and Public Interest/Public Service Committee. I generally spoke about the *Vasquez v. Rackauckas* litigation involving a due process challenge to a gang injunction. I have no notes, transcript, or recording. The address for the San Francisco Asian American Bar Association is P.O. Box 387, San Francisco, California 94104.

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.

None.

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 cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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 of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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 any public offices.

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

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;

From 2008 to 2009, I served as a law clerk to the Hon. Susan P. Graber on the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced alone.

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

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

2009 – 2012
Munger, Tolles, & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Associate

2012 – present
United States Attorney's Office for the District of Connecticut
157 Church Street, 25th Floor
New Haven, Connecticut 06510
Assistant United States Attorney
Deputy Chief, Major Crimes Unit (November 2017 – present)
Deputy Chief, Major Crimes and National Security Unit (November 2016 – November 2017)
Assistant United States Attorney (2012 – present)

2017 – 2019
Yale Law School
127 Wall Street
New Haven, Connecticut 06520
Clinical Visiting Lecturer in Law (Prosecution Externship)

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

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

b. Describe:

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

As an associate at Munger, Tolles, & Olson LLP, I worked on various federal and state trial court complex commercial litigation matters.

Since joining the U.S. Department of Justice as an Assistant United States Attorney in July 2012, I have worked primarily in federal criminal law. From 2012 to 2016, I worked as a line Assistant handling a broad variety of federal criminal cases in what was then the Major Crimes and National Security Unit, including child exploitation, identity theft, and government program fraud matters. In 2016, I was named the Deputy Chief of the

Major Crimes and National Security Unit, a position in which I maintained my own caseload and also supervised other attorneys in the Unit. In 2017, the unit's name changed to the Major Crimes Unit; I continue to serve as Deputy Chief of the Major Crimes Unit through the present. I currently maintain my own caseload and supervise 10 attorneys in the Unit, including all new Assistants who join the Office, and 4 support staff. Throughout my time as an Assistant, including as a supervisor, I have appeared regularly in the U.S. District Court for the District of Connecticut in initial appearances, detention hearings, motion hearings, jury trials, and sentencings. I have briefed several and argued four cases in the United States Court of Appeals for the Second Circuit. I also serve in a number of leadership roles in the Office, including Human Trafficking Coordinator and Hate Crimes Coordinator.

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

Between 2009 and 2012, I was an associate at Munger, Tolles, & Olson LLP. I worked on various commercial litigation matters, including primarily a breach of contract action stemming from the mortgage crisis of 2008. I also worked on intellectual property and internal investigation matters. My clients were typically corporations in the banking, technology, and entertainment industries.

Since 2012, I have been a practicing attorney at the U.S. Department of Justice, where my only client has been the United States of America. Although I have worked on a variety of criminal matters, I have spent considerable time working on matters involving human trafficking, child exploitation, hate crimes, identity theft, and fraud/white collar crimes.

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

As an Assistant United States Attorney, my practice has been 100 percent in litigation. I frequently appear in the U.S. District Court at every stage of criminal matters, including initial appearances, detention hearings, status conferences, plea hearings, motion hearings, trials, sentencings, and habeas proceedings. During my time at the U.S. Attorney's Office, I have prosecuted dozens of criminal cases from investigation through conviction, sentencing, and appeal, including five cases that were tried to verdict before a jury.

While I was an associate at Munger, Tolles, & Olson LLP, my practice was also 100 percent in litigation. I did not appear in court frequently, although I had one bench trial in federal court.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 10%
   3. other courts: __%
   4. administrative agencies: __%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

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

I have handled five criminal jury trials to verdict, three of which were child sex trafficking matters. Of the five, I was chief counsel in one trial and associate counsel in four trials. While in private practice, I also tried one civil bench trial to verdict, in which I was associate counsel.

i. What percentage of these trials were:
   1. jury: 83%
   2. non-jury: 17%

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

While I was an associate at Munger, Tolles, & Olson LLP, I was a co-author on an *amicus curiae* brief submitted to the Supreme Court of the United States in *McDonald v. City of Chicago*, No. 08-1521. The brief was submitted on behalf of various organizations committed to protecting the public's health, safety, and well-being, including the American Academy of Pediatrics, The American Association of Suicidology, The Society for Adolescent Medicine, the Children's Defense Fund, Women Against Gun Violence, Youth Alive!, The Family Violence Prevention Fund, and the National Network to End Domestic Violence, as Amici Curiae in Support of Respondents. A copy of the brief is supplied.

Further, while at the law firm, I represented a California state prisoner in a Section 1983 action in connection with a reply brief to his petition for writ of certiorari. Our client had proceeded *pro se* in his excessive force action in the district court. The district court's judgment against him was affirmed on appeal. He filed a petition for writ of certiorari in the United States Supreme Court. *See Palmer v. Valdez*, No. 09-6429. The Supreme Court requested a response from Respondents in the matter. I worked with a partner at the law firm on drafting the

reply brief in support of the petition for writ of certiorari. The petition ultimately was denied. Copy of reply brief supplied.

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

    a. the date of representation;

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

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

    1. *United States v. Hamlett*, D. Conn. Case No. 3:18-cr-24 (Bolden, J.)

    Party Represented: United States of America
    Dates of Representation: 2017 – present

    I served as associate trial counsel in this matter before The Hon. Victor A. Bolden, United States District Judge, which concerned the sex trafficking and production of child pornography of two teenage girls. In the investigation stage, I was the lead prosecutor; in that role, I worked with the investigators to develop the case through search warrants, witness interviews, and other investigative avenues. After the case was charged, I drafted and argued several pre-trial motions and responses, including a contested response to a motion to suppress evidence found on a cellular phone. A colleague whom I supervise joined the prosecution team and became the first chair at the trial. Just before and during the trial, I briefed and argued substantive motions, motions *in limine*, and responses to motions *in limine*, including a mid-trial motion to exclude proposed defense expert testimony. At trial, I delivered the opening statement and rebuttal argument; examined several witnesses, including a minor victim; and cross-examined the only defense witness. I also co-authored the sentencing memorandum. Following a jury trial, Mr. Hamlett was convicted and sentenced principally to 180 months' imprisonment. The case is currently pending on appeal; I served as associate counsel on the appeal briefing.

    Co-Counsel:
    Nancy Gifford
    Assistant United States Attorney
    450 Main Street, Suite 328

Hartford, CT 06103
(860) 760-7967

Defense Counsel:
Moira Buckley
Assistant Federal Defender
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106
(860) 493-6260

2. *United States v. Ojo*, D. Conn. Case No. 3:17-cr-179 (Meyer, J.)

Party Represented: United States of America
Dates of Representation: 2017 – 2019

I served as sole counsel in the investigation and prosecution of Mr. Ojo for a wire fraud conspiracy and identity theft scheme in which employees of school districts in Connecticut were fraudulently induced through email into providing the IRS Forms W-2 for all school district employees. Fraudulent federal income tax returns were then filed using the victims' personal identifying information. Mr. Ojo pleaded guilty to conspiracy to commit wire fraud and aggravated identity theft and was sentenced to 32 months' imprisonment. I represented the Government at the change of plea and sentencing hearings and authored the Government's sentencing memorandum. I also briefed the Government's opposition to Mr. Ojo's *habeas corpus* petition, which was denied on the papers.

Defense Counsel:
Tracy Hayes
Assistant Federal Defender
265 Church Street, Suite 702
New Haven, CT 06510
(203) 498-4200

3. *United States v. Kelsey*, D. Conn. Case No. 3:17-cr-36 (Hall, J.), 807 F. App'x 61 (2d Cir. 2020) (summary order) (Katzmann, C.J., Wesley, Bianco, J.)

Party Represented: United States of America
Dates of Representation: 2016 – present

I served as lead trial counsel in this child sex trafficking matter, which involved Mr. Kelsey's trafficking of at least five teenage girls and numerous young adult women. As the sole prosecutor initially assigned to the case, I worked closely with the Federal Bureau of Investigation and Connecticut State Police on the investigation, which included preparation of search warrants and victim and witness interviews. The case culminated in a jury trial before The Honorable Janet C. Hall, United States District Judge, at which Mr. Kelsey was convicted of

conspiracy to commit sex trafficking and two counts of sex trafficking of minors. I authored and argued several pretrial motions, including motions *in limine*; examined multiple trial witnesses, including a victim; and delivered the closing argument at the trial. Mr. Kelsey was sentenced to 180 months' imprisonment. I drafted the sentencing memorandum and argued for the Government at sentencing. The Government sought restitution for the victims, under the trafficking restitution law. The conviction was affirmed on appeal, but the case was remanded, with the Government's consent, for reconsideration of the payment schedule for the restitution order. I briefed the appeal with co-counsel and argued it. I also briefed the government's opposition to Mr. Kelsey's petition for *habeas corpus* relief, which remains pending.

Co-Counsel:
Marc Silverman
Assistant United States Attorney
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3734

Defense Counsel:
Bruce Koffsky and Audrey Felsen
Koffsky & Felsen, LLC
1150 Bedford Street
Stamford, CT 06905
(203) 327-1500

4. *United States v. Morris and Dozier*, D. Conn. Case No. 3:16-cr-153 (Meyer, J.)

Party Represented: United States of America
Dates of Representation: 2016 – 2018

I served as lead counsel in the investigation and prosecution of Mr. Morris and Ms. Dozier for sex trafficking a teenage girl in various locations in Connecticut. Mr. Morris forced the teenager to get a tattoo of a bar code on her neck to signify that she was his property. Mr. Morris ultimately pleaded guilty to the sex trafficking charge and was sentenced to 168 months' imprisonment. Ms. Dozier pleaded guilty to conspiracy to commit sex trafficking of a minor and was sentenced to time served. I represented the Government at the change of plea hearings for both defendants; a colleague handled the sentencing briefing and hearings.

Co-Counsel:
Stephen B. Reynolds (formerly an Assistant U.S. Attorney)
Senior Managing Counsel
Director of Ethics and Compliance Investigations

CIGNA
900 Cottage Grove Road
Bloomfield, CT 06002
(203) 658-4289

Defense Counsel:
Justin Smith (for Mr. Morris)
Duffy Law, LLC
129 Church Street, Suite 310
New Haven, CT 06510
(203) 464-7774

David Wenc (for Ms. Dozier)
Wenc Law Firm, LLC
184 Dusky Lane
Suffield, CT 06078
(860) 371-6633

5. *United States v. Hakey*, D. Conn. Case No. 3:15-cr-232 (Shea, J.)

Party Represented: United States of America
Dates of Representation: 2015 – 2016

I served as co-counsel with another Assistant U.S. Attorney in the investigation and prosecution of Mr. Hakey, who fired numerous shots from a high-powered rifle at the Ahmadiyya Baitul Aman "House of Peace" mosque in Meriden, Connecticut, on the night of the Paris terrorist attacks in November of 2015. Mr. Hakey resided next to the mosque. My colleague and I worked with the FBI on the investigation, which included preparing a search warrant for Mr. Hakey's Facebook account, and initially charged Mr. Hakey by way of criminal complaint before seeking an indictment. Throughout the case, I coordinated with the victims of the shooting, who participated in the various proceedings. Mr. Hakey expressed remorse for his actions and the victims ultimately forgave him, based on their religious convictions. I co-authored the sentencing memorandum in the case. Mr. Hakey pleaded guilty to one count of intentionally damaging religious property, a federal hate crime, and was sentenced to 6 months' imprisonment and supervised release that included a cultural competency education component.

Co-Counsel:
Ray Miller
Assistant United States Attorney
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3825

Defense Counsel:

Jeffrey B. Cohen
Jeffrey B. Cohen Attorney at Law
3000 Whitney Avenue, Suite 208
Hamden, CT 06518
(475) 202-3348

John T. Walkley (formerly in private practice)
Public Defender Services
146 White Street
Danbury, CT 06810
(203) 207-8650

6. *United States v. Edward Thomas and Kayla Walters*, D. Conn. Case No. 3:14-cr-31 (Chatigny, J.)

Party Represented: United States of America
Dates of Representation: 2014 – present

I served as associate trial counsel in the prosecution of Mr. Thomas and Ms. Walters for their sex trafficking of two teenagers from Oregon. Mr. Thomas proceeded to trial, while Ms. Walters entered a guilty plea to conspiracy to commit sex trafficking of a minor. Prior to trial, I co-authored substantive motions, including a contested motion to suppress evidence seized from hotel rooms where one of the minor victims was recovered by the Federal Bureau of Investigation and evidence on Thomas's person. At the suppression hearing, I examined a government witness. I also briefed various substantive pre-trial motions, including motions *in limine*. At the trial, I delivered the opening statement and rebuttal argument and examined several witnesses.
Mr. Thomas was convicted of conspiracy to commit sex trafficking of a minor and two counts of sex trafficking of a minor, and was sentenced to 210 months' imprisonment. I briefed the government's opposition to Mr. Thomas's petition for *habeas corpus* relief, which remains pending. Ms. Walters was sentenced to 60 months' imprisonment.

Co-Counsel:
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Assistant United States Attorney
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3732

Defense Counsel:
Tracy Hayes (for Mr. Thomas)
Assistant Federal Defender
265 Church Street, Suite 702
New Haven, CT 06510

(203) 498-4200

Deirdre Murray (for Mr. Thomas) (formerly of Federal Defender's Office, District of Connecticut)
Assistant Federal Defender
Eastern District of North Carolina
409-A Broad Street
New Bern, NC 28560
(252) 633-2970

Walter Bansley, III (for Ms. Walters)
Bansley Law Offices, LLC
267 Orange Street
New Haven, CT 06510
(203) 776-1900

7. *United States v. Ganias*, 755 F.3d 125 (2d Cir. 2014) (Chin, Hall, JJ., Restani, J. sitting by designation), *affirmed upon rehearing en banc*, 824 F.3d 199 (2d Cir. 2016) (Livingston, Lynch, JJ.)

Party Represented: United States of America
Dates of Representation: 2012 – 2016

I served as appellate counsel on the briefing and at the panel oral argument for the United States in this matter, which raised a Fourth Amendment issue at the intersection of technology and law. The appellant contended that the Government's lengthy retention of mirror images of hard drives seized pursuant to one warrant and later searched under authority of a second warrant violated the Fourth Amendment. A divided panel of the United States Court of Appeals for the Second Circuit held that the Government's actions were unreasonable and applied the exclusionary rule to prohibit use of the evidence in question. I co-authored the Government's petition for rehearing *en banc*. The Court granted rehearing *en banc* and held that the Government agents acted in good faith in relying upon the second warrant, with commentary about the complexities of computer searches. At the *en banc* stage, I contributed to the briefing.

Co-Counsel:
Sandra S. Glover
Anastasia King
Jonathan Francis
Assistant United States Attorneys
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3700

Wendy Waldron

Senior Counsel
U.S. Department of Justice
1301 New York Avenue, Northwest
Washington, DC
(202) 353-3745

Defense Counsel:
Stanley Twardy
John Cerreta
Daniel Wenner
Day Pitney LLP
One Stamford Plaza, 7th Floor
263 Tresser Boulevard
Stamford, CT 06901
(203) 977-7300

8. *United States v. Boceanu*, D. Conn. Case No. 3:07-cr-12 (Hall, J.)

Party Represented: United States of America
Dates of Representation: 2012 – 2013

I served as associate trial counsel in this matter before The Hon. Janet C. Hall, United States District Judge, which involved a Romanian national who was charged, along with several other individuals, with wire fraud conspiracy for his role in an extensive cyber phishing scheme. The defendant was extradited from Romania to stand trial. I examined multiple witnesses during the trial and delivered the Government's closing argument. Following the jury trial, Mr. Boceanu was convicted and was sentenced to 80 months' imprisonment. My co-counsel and I were awarded the Executive Office for United States Attorneys Director's Award for Superior Performance as Criminal Assistant United States Attorneys for this matter and its companion cases.

Co-Counsel:
Edward Chang
Assistant United States Attorney
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3796

Defense Counsel:
Jonathan Einhorn
Law Office of Jonathan Einhorn
129 Whitney Avenue
New Haven, CT 06510
(203) 777-3777

9. *Vasquez v. Rackauckas*, C.D. Cal. Case No. 8:09-cv-1090 (Fairbank, J.), 203 F. Supp. 3d 1061 (C.D. Cal. 2011), *aff'd in part, rev'd in part, and remanded*, 734 F.3d 1025 (9th Cir. 2013)

Parties Represented: Plaintiffs Vasquez, Lara, Bastida, Doe
Dates of Representation: 2010 – 2012

I was part of a pro bono law firm trial team that assisted the American Civil Liberties Union of Southern California in a class action procedural due process challenge brought under 42 U.S.C. § 1983 to the enforcement of a state court permanent injunction issued against an alleged gang and its members by the Orange County, California District Attorney (OCDA) and the City of Orange Police Department (OPD). The injunction prohibited individuals whom the OCDA and OPD determined were members of a particular gang from, among other things, associating with other suspected gang members (including family members), wearing a certain color, and being out past a curfew time in a designated area believed to be gang territory. Following an eleven-day bench trial in which I was associate counsel, the district court held that, in designating the plaintiff class members as gang members subject to the injunction, the OCDA and OPD did not provide the class members basic due process protections to allow them to challenge their inclusion in the injunction. I examined witnesses during the trial and contributed to significant pre-trial and post-trial motions briefing. The district court's holding was affirmed in principal part on appeal.

Co-Counsel:
Joseph Ybarra (formerly of Munger, Tolles, & Olson LLP)
Halpern, May, Ybarra, Gelberg
550 South Hope Street, Suite 2330
Los Angeles, CA 90071
(213) 402-1900

Jacob Kreilkamp
Laura Smolowe
Munger, Tolles, & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
(213) 683-9100

Belinda Escobosa Helzer (formerly of the ACLU of Southern California)
National Senior Counsel
Mexican American Legal Defense and Educational Fund
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014
(213) 629-2512

Peter Bibring
Director of Police Practices/Senior Staff Attorney
ACLU of Southern California
1313 West 8th Street, #200
Los Angeles, CA 90017
(213) 977-5253

Defense Counsel:
S. Frank Harrell
Lynberg & Watkins
1100 West Town & Country Road, Suite 1450
Orange, CA 92868
(714) 937-1010

Wayne Winthers (formerly of Orange City Attorney Office)
Orange Civic Center
300 East Chapman Avenue
Orange, CA 92866
(714) 744-5580

10. *BNP Paribas Mortgage Corp. v. Bank of America, N.A.*, S.D.N.Y. Case No. 1:09-cv-09783 (Sweet, J.) and *Deutsche Bank AG v. Bank of America, N.A.*, S.D.N.Y. Case No. 1:09-cv-09784 (Sweet, J.)

Party Represented: Bank of America, N.A.
Dates of Representation: 2009 – 2012

While at Munger, Tolles, & Olson LLP as an associate, I was a member of the litigation team representing Bank of America in this breach of contract action stemming from its role as the trustee, custodian, and collateral and depository agent for a special purpose entity called Ocala Funding, which provided funding for mortgage loans originated by the now-defunct entity Taylor, Bean, & Whitaker Mortgage Corp. BNP Paribas and Deutsche Bank invested heavily in Ocala Funding. I assisted in motion briefing and discovery during my employment at the law firm. I argued one motion in federal court. The case settled after I left the firm.

Co-Counsel:
Marc Dworsky (formerly of Munger, Tolles, & Olson LLP)
Reid Collins & Tsai LLP
1301 South Capital of Texas Highway, Suite C300
Austin, TX 78746
(213) 429-4022

Kristin Linsley (formerly of Munger, Tolles, & Olson LLP)
Gibson, Dunn, & Crutcher

555 Mission Street, Suite 3000
San Francisco, CA 94105
(415) 393-8395

Opposing Counsel:

Robin Henry (for BNP Paribas) (formerly of Boies, Schiller & Flexner LLP)
Fried Frank
One New York Plaza
New York, NY 10004
(212) 859-8816

Daniel Dockery (for Deutsche Bank AG)
Williams & Connolly LLP
725 Twelfth Street, Northwest
Washington, DC 20005
(202) 434-5000

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

As an Assistant U.S. Attorney, I have personally handled numerous investigations that led to convictions after guilty pleas that did not proceed to trial. These matters include an array of offenses, including child exploitation; human trafficking; hate crimes; government program and white-collar fraud; identity theft; and environmental crimes, among others. In these matters, I typically represented the Government at guilty plea hearings and sentencing hearings, and wrote the Government's sentencing submissions.

I also serve in the following roles at the United States Attorney's Office:

Human Trafficking Coordinator. In this position, which I have held since approximately 2016, I am responsible for intake, investigation, and prosecution of sex and labor trafficking matters. I also spearhead training of law enforcement officers, hospital workers, hotel workers, social workers, and other community groups for human trafficking awareness.

Hate Crimes Coordinator. In this position, which I have held formally since April of 2019, I am responsible for intake, investigation, and prosecution of hate crimes matters. I also spearhead training of law enforcement and community groups about federal hate crimes laws. I have organized "Protecting Your House of Worship" trainings for synagogues, mosques, and gurdwaras, through which members of the Office and local

police department officers conducted security assessments of religious facilities and proposed security plans in the event of incidents.

International Coordinator. In this position, I am responsible for addressing or assigning all incoming requests for legal assistance from foreign nations, including for evidence and extradition. I also consult on outgoing requests to foreign nations for extradition and legal assistance.

Outreach Committee Chairperson. In this role, I organize, coordinate, and participate in outreach activities with the U.S. Attorney's Office, including community meetings, conferences, panels, and events.

I have not engaged in any lobbying activities or registered as a lobbyist.

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

    During the academic terms between January 2017 and May 2019, I served as a Visiting Clinical Lecturer at Yale Law School. In that capacity, I co-taught the Prosecution Externship course, through which law students interned at the United States Attorney's Office (or the New Haven State's Attorney's Office) and attended a weekly seminar that highlighted various practice areas and cases. The first class meeting provided students with an overview of criminal procedure, to provide a framework for the term. Subsequent classes moved through the life cycle of a case, from investigation to charging, and from plea to trial or sentencing. I was responsible for organizing the weekly seminar sessions, which featured guest speakers each week, and for assigning work to the students. Syllabi are provided for the Fall 2017, Fall 2018, and Spring 2019 terms. I am unable to locate the syllabus from the Spring 2018 term.

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.

    In my capacity as a federal employee, I participate in the Thrift Savings Plan. I also hold a 401(k) through Munger, Tolles, & Olson LLP, to which I stopped contributing when I left the law firm but that continues to accrue income through investments.

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

None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    My husband is the Dean of a residential college at Yale University. Through his employment, my family and I reside in the college. Our lodging and meals are provided by Yale. Because of this arrangement, if confirmed, I would recuse myself from any matters involving Yale University, consistent with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

    Additionally, if confirmed, I anticipate recusing myself from any civil or criminal matters that were pending at the United States Attorney's Office for the District of Connecticut during my tenure at that Office, in which I had any direct participation or supervisory authority. If a question were to arise as to whether an actual or potential conflict of interest is presented by my participation in a case litigated by the United States Attorney's Office for the District of Connecticut but over which I did not have direct participation or supervisory authority, I would alert the parties to the situation in question and solicit their views. I would recuse myself where appropriate to avoid even the appearance of a conflict.

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

    If confirmed, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. Further, upon learning of any situation that a party or observer might perceive or identify as an actual or

potential conflict of interest, I would alert the parties to the situation in question and solicit their views. I would also consult with my judicial colleagues on these issues. I would recuse myself where appropriate to avoid even the appearance of a conflict.

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

As an Assistant United States Attorney, I am limited in my ability to practice law outside the Department of Justice. I have, however, participated as a member of the Connecticut Bar Association's Committee on Human Trafficking, which addresses human trafficking issues through legislation, panels, and workshops, and is presently engaged in developing a network of attorneys to provide pro bono legal services to victims of human trafficking. I do not participate in the legislative work of the Committee.

While an associate at Munger, Tolles, & Olson, I had an active pro bono practice. I was associate trial counsel in the case of *Vasquez v. Rackauckas*, which raised a procedural due process challenge to the enforcement of a gang injunction by the Orange County, California District Attorney and the City of Orange Police Department. In the weeks leading up to trial and during trial, this matter took a significant amount of my time.

Further, with a partner at Munger, Tolles, & Olson, I represented a California state prisoner in a Section 1983 action in connection with a reply brief to his petition for writ of certiorari in the Supreme Court of the United States. Our client had proceeded *pro se* in his excessive force action in the district court, and the court issued a judgment against him after a bench trial. The primary issue in the appeal, which lawyers from Munger, Tolles, & Olson handled before I joined the firm, was whether the district court improperly conditioned our client's ability to present witnesses telephonically on the waiver of his right to a trial by jury. The district court's judgment was affirmed. *See Palmer v. Valdez*, 560 F.3d 965 (9th Cir. 2009). Our client filed a petition for writ of certiorari in the United States Supreme Court. I worked with the lead partner on the reply brief in support of the petition for writ of certiorari. The petition ultimately was denied.

Finally, I represented an individual before the Board of Immigration Appeals in a case that considered whether the Department of Homeland Security had proven the existence of a prior conviction for which the respondent was charged with removability. *See In re: Medrano*, Board of Immigration Appeals, 2011 WL 6962819 (Dec. 16, 2011) (unpublished; opinion by Garry D. Malphrus, for the Board of Immigration Appeals).

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

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

In February of 2021, I received an announcement soliciting applications for the vacancies on the United States District Court for the District of Connecticut. I submitted an application to a staff member of U.S. Senator Richard Blumenthal by the deadline of March 10, 2021. I understand that there was an Advisory Committee convened by Senators Blumenthal and Christopher Murphy to review the applications. I was not interviewed by the Committee, but I understand that my application was passed on to Senators Blumenthal and Murphy for a possible interview.

On March 31, 2021, I interviewed with Senators Blumenthal and Murphy and their aides. On April 9, 2021, I interviewed again with Senators Blumenthal and Murphy and their aides.

On April 18, 2021, I was contacted by the White House Counsel's Office for an interview, which took place on April 20, 2021. Since April 21, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 2, 2021, I participated in a follow-up conversation with the White House Counsel's Office. On June 15, 2021, my nomination was submitted to the Senate.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Omar Antonio Williams

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

   United States District Judge for the District of Connecticut

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: Hartford Superior Court
   101 Lafayette Street
   Hartford, Connecticut 06106

   Residence: West Hartford, Connecticut

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

   1977; Rochester, New York

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

   1999 – 2002, University of Connecticut School of Law; J.D., 2002
   1995 – 1998, University of Connecticut; B.A. (*cum laude*), 1998
   1994 – 1995, Carnegie Mellon University (no degree received)

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

   2016 – present
   Hartford Superior Court
   101 Lafayette Street

Hartford, Connecticut 06106
Presiding Judge of Criminal Matters (2017 – present)
Judge of the Superior Court (2016 – present)

2014 – 2016
New London Superior Court
112 Broad Street
New London, Connecticut 06320
Judge of the Superior Court

2003 – 2014
Office of the Public Defender
121 Elm Street
New Haven, Connecticut 06510
Attorney (Assistant Public Defender)

Fall 2003
Office of the Public Defender
17 Belden Avenue
Norwalk, Connecticut 06850
Per Diem Attorney

Summer 2003
Law Office of Kevin C. Ferry
77 Lexington Street
New Britain, Connecticut 06052
Temporary Attorney

2002 – 2003
On the Border Mexican Grill & Cantina
West Main Street
Avon, Connecticut 06001
Server / Bartender

2001 – 2002
Criminal Trial Clinic
University of Connecticut School of Law
55 Elizabeth Street
Hartford, Connecticut 06105
Certified Legal Intern

Summer 2001
Office of the Public Defender
20 Franklin Square
New Britain, Connecticut 06051
Certified Legal Intern

Funded by a federal grant arranged by the Office of the Chief Public Defender, I was paid to provide legal representation to indigent criminal defendants under the close supervision of attorneys within this public defender office.

Summer 2000
Travelers
One Tower Square
Hartford, Connecticut 06183
Legal Intern (Law Department)

1998 – 1999
Brink's, Incorporated
1 Thorndal Circle
Darien, Connecticut 06820
Temporary Employee (Human Resources Information Systems)
This position was by way of referral from:
Hedi Johnson Temporaries
972 Post Road
Darien, Connecticut 06820

Other Affiliations (uncompensated):

2011 – 2012
St. Thomas's Episcopal Church
830 Whitney Avenue
New Haven, Connecticut 06511
Vestry Member (parish council)

2011 – 2012
St. Thomas's Day School
830 Whitney Avenue
New Haven, Connecticut 06511
Member, Board of Directors

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

   I did not serve in the military. I registered with 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.

   University of Connecticut School of Law

Connecticut Public Interest Law Journal, Editor-in-Chief (2001 – 2002)
Travelers Scholarship (2000)

University of Connecticut
Political Science Excellence Award (1998)
Phi Sigma Pi National Honor Fraternity (1998)
Pi Sigma Alpha National Political Science Honor Society (1998)

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.

Connecticut Bar Association
Professionalism Committee
Co-Chair (2019 – present)

Connecticut Judges Association (2014 – present)
Treasurer (2018 – 2019)
Board Member (2016 – 2019)

Education Committee (2017-20) (determines curriculum for training of judges)

Governor Ned Lamont – Lieutenant Governor Susan Bysiewicz Transition Team
Criminal Justice Committee (2018)

Judicial-Media Committee (2018 – present)

Jury Selection Task Force, Connecticut Judicial Branch
Co-Chair (2020)

Lawyers Collaborative for Diversity
Edward Archer Randolph Diversity Award Committee (2016 – 2017)
Co-Chair, Edward Archer Randolph Diversity Award Committee (2016)

New England Regional Judicial Opioid Initiative (2021 – present)

Pre-Bench Orientation (2018; 2021) (training of new judges)

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.

Connecticut, 2003.

There has been no lapse in membership.

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

None.

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.

St. Thomas's Day School, New Haven, Board of Directors (2011 – 2012)

St. Thomas's Episcopal Church, Vestry (parish council) (2011 – 2012)

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

To my knowledge, none of the above organizations or groups currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or through 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.

When Change of Venue Means Change in Verdict: A Critical Analysis of Venue, and its Impact upon the Diallo *Trial*, 2 CONN. PUB. INT. L.J. 65 (2002). Copy supplied.

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

Report of the Jury Selection Task Force to Chief Justice Richard A. Robinson, Dec. 31, 2020. Copy supplied. I co-chaired this task force, but its members, themselves, initiated the recommendations provided in the report.

Lawyers' Principles of Professionalism, as revised by the Professionalism Committee of the Connecticut Bar Association, approved by the Connecticut Bar Association House of Delegates on Oct. 19, 2020. Copy supplied.

Annual Report of Sections and Committees, Connecticut Bar Association, 2019 – 2020 Bar Year. Copy supplied.

I served as a member of the Bail Reform Working Group of the Criminal Justice Committee of the Governor Ned Lamont – Lieutenant Governor Susan Bysiewicz Transition Team. The Working Group produced a memo regarding the state of the law and the impact certain recommendations might have on the courts and on the Judicial Branch.

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.

Testimony of Judge Omar A. Williams and retired Chief Justice Chase T. Rogers, Co-Chairs of the Jury Selection Task Force, Joint Committee on Judiciary Public Hearing in support of H.B. 6548, An Act Concerning the Recommendations of the Jury Selection Task Force, Mar. 15, 2021. Copy supplied.

Comments to the Jury Selection Task Force upon its first meeting, July 14, 2020. Copy supplied.

Special Proceedings in Criminal Court, June 21, 2017. Copy supplied. I was asked to co-present this course at the Connecticut Judges' Institute, an annual training program for new and experienced judges. Notes supplied.

Testimony, Confirmation hearing before the Judiciary Committee of the Connecticut legislature on my reappointment for the position of Superior Court Judge, Jan. 16, 2015. Transcript supplied.

Testimony, Confirmation hearing before the Judiciary Committee of the

Connecticut legislature on my nomination for the position of Superior Court Judge, Nov. 13, 2014. Transcript supplied.

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

June 15, 2021: Speaker, "LCD Summer Pipeline Program," Lawyers Collaborative for Diversity, online program via Zoom. The program provided student interns with basic information about how the court functions and the roles of various personnel; it also had a question-and-answer element. I have no notes, transcript, or recording. The address for the Lawyers Collaborative for Diversity is City Place I, 185 Asylum Street, Hartford, Connecticut 06103.

April 21, 2021: Moderator, "Constance Baker Motley Speaker Series: Eradicating Racial Bias in Jury Selection & Jury Deliberation in CT," Connecticut Bar Association / Connecticut Bar Foundation (co-sponsored event), remote seminar via Zoom. Notes supplied.

January 23, 2021: Oath of Office Administrator, Pembroke Emanuelson (Attorney, State of New Jersey), administered at New Haven, Connecticut. Notes supplied.

October 21, 2020: Speaker, "*State v. Holmes* and the Jury Selection Task Force," Judicial Branch Virtual Internship, remote address via Microsoft Teams. Notes supplied.

October 7, 2020: Panelist, "Virtual Courts: What You Need to Know," Connecticut Bar Association / Hartford County Bar Association (co-sponsored), Webinar live streamed via YouTube. Notes and press coverage supplied.

June 9, 2020: Speaker, "LCD Summer Pipeline Program," Lawyers Collaborative for Diversity, online program via Zoom. The program provided student interns with court access to learn basic information about how the court functions and the roles of various personnel; it also had a question-and-answer element. I have no notes, transcript, or recording. The address for the Lawyers Collaborative for Diversity is City Place I, 185 Asylum Street, Hartford, Connecticut 06103.

May 17, 2020: Oath of Office Administrator, Attorney Jamie Woodside (Commissioner of the Superior Court), West Hartford, Connecticut. Notes and

press coverage supplied.

March 2, 2020: Speaker, "Read Across America," Parkville Community School, Hartford, Connecticut. For this event, I read books to fifth grade students and participated in a question-and-answer about becoming and serving as a judge. I have no notes, transcript, or recording. The address for Parkville Community School is 47 New Park Avenue, Hartford, Connecticut 06106.

December 6, 2019: Welcome Speaker, "Professionalism Boot Camp," Connecticut Bar Association, New Britain, Connecticut. Notes supplied.

November 13, 2019: Panelist, "Annual Judges of Color Reception," Lawyers Collaborative for Diversity, Hartford, Connecticut (co-sponsored by Wiggin and Dana, LLP, and by the George W. Crawford Black Bar Association). Panelists spoke about diversity and advancement within the legal community. I have no notes, transcript, or recording. The address for the Lawyers Collaborative for Diversity is City Place I, 185 Asylum Street, Hartford, Connecticut 06103.

June 26, 2019: Facilitator, "*The Scottsboro Boys* Post-Performance Talkback with the Cast," Playhouse on Park, West Hartford, Connecticut. Notes supplied.

May 22, 2019: Speaker, Student Site Visit, Hartford Public High School, Hartford, Connecticut. The students visited court (Hartford Superior Court, 101 Lafayette Street, Hartford) to learn about the roles and the background of various court personnel, and to observe court action. I have no notes, transcript, or recording. The address for Hartford Public High School is 55 Forest Street, Hartford, Connecticut 06105.

May 21, 2019: Oath of Office Administrator, Attorney Josalyn Ayuso (Commissioner of the Superior Court), Hartford, Connecticut. I have no notes, transcript, or recording. The address for Hartford Superior Court is 101 Lafayette Street, Hartford, Connecticut 06106.

April 2, 2019: Panelist, "Observations From the Bench: Tell Me What I Really Need to Know to Make My Decision," Hartford County Bar Association, Hartford, Connecticut. The discussion was on the type of information lawyers should provide to judges in court, and it included a question-and-answer session. I have no notes, transcript, or recording. The address for the Hartford County Bar Association is 100 Pearl Street, 4th Floor, Hartford, Connecticut 06105.

January 2, 2019: Oath of Office Administrator, Attorney Stacy Schleif (Commissioner of the Superior Court), Hartford, Connecticut. I have no notes, transcript, or recording. The address of Hartford Superior Court is 101 Lafayette Street, Hartford, Connecticut 06106.

June 29, 2018: Speaker, "LCD Summer Pipeline Program," Lawyers

Collaborative for Diversity, Hartford, Connecticut. This portion of the summer pipeline program took student interns to court to learn basic information about how it functions and the roles of personnel; it also had a question-and-answer elements. I have no notes, transcript, or recording. The address for the Lawyers Collaborative for Diversity is City Place I, 185 Asylum Street, Hartford, Connecticut 06103.

March 20, 2018: Guest Speaker, Victim Law and Service Administration, University of New Haven, New Haven, Connecticut. The topic of this class was victim participation in the criminal court process. I have no notes, transcript, or recording. The address for the University of New Haven is 300 Boston Post Road, West Haven, Connecticut 06516.

March 5, 2018: Speaker, University of Connecticut School of Journalism Site Visit, Hartford Superior Court, Hartford, Connecticut. I believe the talk was on basic court concepts and procedures, as well as media access to court proceedings, and involved court observation. I have no notes, transcript, or recording. The address for the University of Connecticut Department of Journalism is 365 Fairfield Way, U-1229, Storrs, Connecticut 06269.

November 3, 2017: Oath of Office Administrator, Attorney Reginald Dwayne Betts (Commissioner of the Superior Court), New Haven, Connecticut. At the age of 16, Attorney Betts, an honor student, committed an armed carjacking. After time in jail, he graduated from Prince George's Community College, the University of Maryland, and Yale Law School. I have no notes, transcript, or recording, but press coverage supplied. I administered the oath at the New Haven Judicial District, 235 Church Street, New Haven, Connecticut 06510.

October 11, 2017: Speaker, "Best Practices Round Table Forum," Hartford County Bar Association, Hartford, Connecticut. The conversation was broken down into small groups for targeted discussion between judges and lawyers about best practices within a certain legal discipline. I have no notes, transcript, or recording. The address for the Harford County Bar Association is 100 Pearl Street, 4th Floor, Hartford, Connecticut 06105.

June 19, 2017: Speaker, "Northwest Catholic High School Summer Job Shadow," Hartford Superior Court, Hartford, Connecticut. Topics included the role of various court personnel, how to become a judge, and basic court information. I have no notes, transcript, or recording. The address for Northwest Catholic High School is 29 Wampanoag Drive, West Hartford, Connecticut 06117.

May 5, 2017: Speaker, "Connecticut Community College Black and Latino Male Coalition Leadership Conference," Manchester Community College, Manchester, Connecticut. I was asked to informally speak to this group of male, minority, students who were attending different local community colleges. My comments were delivered during a lunch break within their leadership seminar; I believe that

I spoke about becoming a judge, and about pursuing academic success. I have no notes, transcript, or recording. The address for Manchester Community College is 60 Bidwell Street, Manchester, Connecticut 06040.

March 30, 2017: Speaker, Arraignments / Bond Arguments, Connecticut Criminal Defense Lawyers Association, delivered at Christopher Martin's Restaurant, 860 State Street, New Haven, Connecticut. Notes supplied.

December 15, 2016: Speaker, Chief Probation Officer Charles T. Donnelly Retirement, Office of Adult Probation, New London, Connecticut. Notes supplied.

May 25, 2016: Presenter, 2016 Edwin Archer Randolph Diversity Award (Attorney Mark Roellig, Recipient), Lawyers Collaborative for Diversity, East Hartford, Connecticut. Notes supplied.

March 28, 2016: Host, Bennie Dover Jackson Middle School Mock Trial and Discussion (Law Advisory Workshop), New London Superior Court, New London, Connecticut. I served as a mock trial judge and discussed courtroom personnel and procedures with the students. I have no notes, transcript, or recording, but press coverage supplied. The address for Bennie Dover Jackson Middle School is 36 Waller Street, New London, Connecticut 06320.

March 8, 2016: Guest Lecturer, Pre-Trial Litigation (Attorney Robyn Sondak, Adjunct Professor), University of Connecticut School of Law, Hartford, Connecticut. The topic was what to expect in court. I have no notes, transcript, or recording. The address for the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

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

Michael Bowler, *Jury Selection Task Force Pt. 2*, CONN. JUD. BRANCH: CALENDAR CALL PODCAST (May 3, 2021), https://www.jud.ct.gov/Podcast/Posts/Post.aspx?Id=55.

Michael Bowler, *Jury Selection Task Force Pt. 1*, CONN. JUD. BRANCH: CALENDAR CALL PODCAST (May 3, 2021), https://www.jud.ct.gov/Podcast/Posts/Post.aspx?Id=54.

David Owens, *Days away from his 100th birthday, Avon's Morton Katz is thriving as a public defender in Hartford criminal court*, HARTFORD COURANT, May 2, 2019. Copy supplied.

Erik Ofgang, *At Age 99, Attorney Morton Katz Is Not Nearly Done Fighting for His Clients*, CONN. MAGAZINE, Feb. 20, 2019. Copy supplied.

Pat Eaton-Robb (Associated Press), *Lawyer, 99, will retire 'when they carry me out of here'*, N. Y. POST; Sept. 30, 2018. Copy supplied.

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

I have served as a Judge of the Superior Court for the State of Connecticut since my November 13, 2014, appointment. Our state's governor nominates judges from a list of applicants deemed fit for nomination by a Judicial Selection Committee; appointment follows approval by our state's Judiciary Committee and legislature. When I was appointed by our governor, the full legislature was not in session, so after serving as a judge, I again appeared before the Judiciary Committee, was approved for reappointment, and was confirmed by the full legislature on January 16, 2015.

The Superior Court is a trial court of general jurisdiction, so judicial assignments can encompass criminal, civil, juvenile, family, and/or housing court matters. While assigned to the New London court, I handled criminal and housing matters. Since then, I have been assigned to preside over criminal matters in Hartford.

Within the Criminal Division, Connecticut courts are divided into Judicial District (JD) courts and Geographical Area (GA) courts. The JD courts handle the most serious cases, as determined through a case-by-case screening process performed by its presiding judge (only murder cases automatically are transferred to the JD). All other cases remain at the GA. I have been assigned to the Criminal Division of the Hartford GA court since 2016. In 2017, our state's Chief Court Administrator assigned me to be the presiding judge of criminal matters at the Hartford GA. Traditionally, these assignments used to be switched every year or two, but I have remained the presiding judge of criminal matters at the Hartford GA since that 2017 assignment.

In my current role as the presiding judge of criminal matters, one of my main responsibilities is to determine which cases should be scheduled for trial, and in which order they should be tried. Accordingly, the presiding judge handles the cases that otherwise were not resolved through pretrial negotiations between the parties; the court conducts judicial pretrial negotiations with the parties where the judge assesses the case. At a judicial pretrial conference, the prosecutor decides which charges they will pursue, and the judge has the authority to determine an appropriate sentence that would be imposed if the defendant accepts the conviction(s) sought by the prosecution. And while JD courts handle the most serious offenses such as murder, a busy jurisdiction such as Hartford tends to keep matters at the GA that in other jurisdictions more likely would be transferred to its JD court. In that regard, I have worked toward the resolution of a wide range of criminal cases. Also, I have been assigned certain JD matters, such as probable cause hearings for murder cases (so as not to preclude a JD trial judge from presiding

over their jury trials), JD violation of probation hearings (which are tried to the court with a preponderance of the evidence standard of proof), and, by appointment of our Chief Court Administrator, I have served on three-judge panels for murder trials in which the defendant has raised a lack of capacity defense due to mental disease or defect.

In addition to my responsibilities as presiding judge of criminal GA matters, I also have served on the Sentence Review Division since 2017, as appointed by the Chief Justice of the Supreme Court of Connecticut. Criminal defendants from throughout the state who have been sentenced to at least three years in jail can apply for review by the Division, which determines whether the sentence under review is inappropriate or disproportionate. The review division has the discretion to reduce the sentence, to affirm the sentence and leave it untouched, or to increase the sentence (up to the maximum term of imprisonment to which the defendant could have been sentenced by the sentencing judge).

Since 2017, I also have served on the Wiretap Panel, as appointed by the Chief Justice of Connecticut's Supreme Court. This three-judge panel reviews applications requesting the interception of wire communications. The panelists and their work remain confidential, but for the review and reporting requirements established by Section 54-41a *et seq.* of the General Statutes of Connecticut.

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

   I have presided over three criminal trials to verdict. One was a bench trial. The other two were murder trials where, because the defendants raised a defense of lack of capacity due to mental disease or defect, I served on three-judge panels.

   i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

   ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

   A database search uncovered the following (unreported) opinions:

   State v. R.K., K10K-CR08-296700; K10K-CR08-299412; K10K-CR08-299425, 2016 WL 353327 (Jan. 4, 2016).

   Fed. Nat'l Mortg. Ass'n v. A.T., K10K-CV15-31389,

2015 WL 9684544 (Dec. 10, 2015).

J.L. v. A.M., K10K-CV15-31638, 2015 WL 9310615 (Nov. 24, 2015).

Additionally, I have written decisions on behalf of the Sentence Review Division:

State v. M.F., TTD-CR15-108036, 2020 WL 9256369 (Oct. 27, 2020).

State v. M.Y., T19R-CR11-99206, 2019 WL 8440615 (Nov. 26, 2019).

State v. J.B., NNH-CR14-150831, 2019 WL 8324423 (Nov. 26, 2019).

State v. D.M., docket numbers KNL-CR12-120162 and KNL-CR12-119509, 2019 WL 4060117 (June 25, 2019).

State v. L.M., HHB-CR14-274352, 2019 WL 3219351 (Mar. 26, 2019).

State v. L.C., H15N-CR16-285617, 2019 WL 3219507 (Mar. 26, 2019).

State v. J.W., UWY-CR16-439538, 2019 WL 2245961 (Feb. 26, 2019).

State v. C.M., UWY-CR07-36203; UWY-CR08-368369; UWY-CR04-204587; and UWY-CR04-204586, 2019 WL 2440209 (Jan. 22, 2019).

State v. M.B., KNL-CR13-123144, 2019 WL 2437922 (Jan. 22, 2019).

State v. R.C., HHB-CR13-270260, 2018 WL 7132458 (Oct. 23, 2018).

State v. J.F., UWY-CR06-347236, 2018 WL 6261856 (Sept. 25, 2018).

State v. S.F., HHD-CR15-679461; H14H-CR13-245400, 2018 WL 6242297 (Sept. 25, 2018).

State v. M.B., HHD-CR14-672012, 2018 WL 6445535 (Sept. 25, 2018).

State v. A.O., UWY-CR08-234198, 2018 WL 6261856 (June 26, 2018).

State v. J.H., T19R-CR16-109563; T19R-CR16-109627, 2018 WL 4781634 (June 26, 2018).

State v. J.S., FBT-CR14-279715, 2018 WL 1936424 (Mar. 27, 2018).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a

copy of the opinion or judgment (if not reported).

1. *State v. Danielson*, H14H-CR20-739054 (granted motion on September 10, 2020). Copy supplied.

Counsel for a surety (bondsperson) filed a motion that asked the court to order the arrest of the principal (a criminal defendant for whom the surety had posted bond) with an immediate commitment to jail. The related criminal case alleged that the principal (criminal defendant) assaulted his elderly mother. While the principal was out on the bond posted by the movant (surety), the mother (who was the complainant in the criminal matter) informed the surety that the principal asked her to get his passport because "he planned to abscond and flee to Italy." The surety argued that it had "substantial reason to believe that its principal . . . intend[ed] to abscond," and that Mr. Danielson should be returned to jail.

Relevant Connecticut law defers to the judgment of the surety in ensuring that a principal will appear in court. Having found that the surety complied with all legal prerequisites, I cited § 54-65 of the General Statutes and *State v. Nugent*, 199 Conn. 537 (1986), in granting the motion. I ordered the clerks to schedule a bond hearing immediately upon the principal's return to jail, so that the court could assess the principal's pretrial liberty (rather than having only the surety determine whether the accused would return to court).

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2. *State v. Grier*, H14H-MV17-508734 (written ruling issued April 30, 2018). Copy supplied.

The movant was a criminal defendant charged with operating a motor vehicle under the influence of alcohol or drugs who challenged under equal protection grounds a statute that precluded him (as a holder of a commercial driver's license) from utilizing a diversionary program that otherwise could have afforded him an opportunity to avoid a career-ending conviction. Finding that the defendant had not asserted any fundamental right and that he was not a member of a protected class, I applied the rational basis standard and concluded that the challenged statute was rationally related to the legitimate governmental goal of public safety, and therefore denied the motion. While the federal constitutional claim was addressed, I deemed abandoned a state constitutional claim that failed to separately allege any state protections beyond those in the federal constitution. Finally, I rejected the defendant's claim that the statute in question violated his presumption of innocence, because he still retained the right to a trial in which the state would bear the burden of proof beyond a reasonable doubt.

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3. *State v. B.B.*, H14H-CR17-139403-T (granted accelerated rehabilitation, March 12, 2018).

The defendant was a white college student accused of defiling her African-American roommate's belongings. The state fully investigated whether there was evidence to charge a crime based on racial bigotry or bias, and determined that there was not. The accused applied for a diversionary program as to her charges of breach of peace and criminal mischief. Following input from each party and from the complainant, I granted the defendant's application for the program, which afforded her the opportunity to learn from her actions without permanent criminal consequence.

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4. *State v. I.L.*, HHD-CR17-694081-T.

Pursuant to § 54-45 (b) of the General Statutes of Connecticut, I was designated by the Chief Court Administrator to sit on a three-judge panel for this murder trial in which the defendant raised a defense of lack of capacity due to mental disease or defect, pursuant to § 53a-13 of the General Statutes of Connecticut. The accused, a teenager with schizophrenia, fatally stabbed his great-uncle because he thought the relative was poisoning his family. The court acquitted the defendant by reason of lack of capacity and ordered him committed to the psychiatric security review board.

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5. *State v. Sanchez*, H14H-CR16-687935 (revised ruling, November 15, 2017). Copy supplied.

The defendant was accused of stealing a bronze plaque from Colt Park in Hartford and then selling it for less than $50 to a scrapyard that cut it into several pieces. At sentencing, I issued a ruling ordering the defendant to pay $5,000 in restitution, based on: an estimate within the arrest warrant that it would cost the city $5,000 to replace the plaque, a representation six months later from a City of Hartford architect that the replacement cost would be $5,000, a restitution study by the Office of Adult Probation that estimated the City of Hartford's out-of-pocket loss to be $5,000, and the state's request for a $5,000 restitution order. Upon my order of full restitution for replacement of the broken plaque, the defendant requested that the seized pieces be returned to him.

In this case, the clerks confirmed that there was no claim by the City of Hartford for return of the pieces of the plaque that had been seized for one year. Because of this, and because full restitution for replacement was ordered, I granted the request to release the pieces of the plaque to the defendant.

Six weeks after the imposed sentence, however, the state made an oral request that the parts of the plaque be ordered returned to the City. Well after the case's resolution, the state received new information from the City of Hartford that it would cost $5,000 for them to melt down and to re-cast the plaque, using a mold.

I scheduled a hearing on the issue, considered the new information, allowed the parties to be heard, and (without defense objection) modified my order by detailed, written articulation, ordering that the broken plaque be returned to its rightful municipal owner.

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6. *State v. Gore*, HHD-CR17-690346-T (probable cause hearing for murder; written ruling issued August 31, 2017). Copy supplied.

In Connecticut, people charged with offenses punishable by death or by imprisonment for life have the right to a hearing in which a judge must determine whether there is probable cause to believe that the offense was committed and that the accused committed it. I presided over Mr. Gore's probable cause hearing for the charge of murder.

Evidence at the hearing showed that the victim was killed by a single gunshot to his upper torso. The shooting took place in broad daylight and the entire crime was captured on high-quality surveillance video. Video showed Mr. Gore arriving in a distinct automobile (attributable only to him) near the scene of the shooting shortly before it took place. It clearly showed Mr. Gore wearing a distinct hat and a pair of sneakers attributable him through a social media photograph he had made public. Mr. Gore was on video approaching the decedent, shooting him, and chasing him while the victim tried to flee. It also showed the defendant leaving the scene in the same motor vehicle in which he had arrived, and there was fingerprint evidence tying him to the car. The court was able to determine that the published video displayed the defendant. Moreover, a witness known to the defendant identified Mr. Gore and his vehicle in speaking with law enforcement officials. Finally, a live round of ammunition recovered from Mr. Gore's vehicle was similar to a shell casing recovered from the scene of the killing.

On the basis of that overwhelming physical and circumstantial evidence presented by the state, I found probable cause to believe that a murder was committed, and to believe that it was committed by Mr. Gore.

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7. *State v. L.W.*, HHD-CR16-257296-T (verdict after court trial, July 10, 2017). Copy supplied.

The accused in this bench trial was one of two passengers in a motor vehicle when the other passenger robbed the driver. The driver resisted, the other passenger fatally shot him, and the defendant fled. L.W. was tried for robbery in the first degree and for conspiracy to commit the same, but evidence supported his claim of duress. Accordingly, I issued a written verdict of acquittal. The codefendant's jury convicted the shooter of murder, robbery in the first degree, and felony murder, but acquitted as to conspiracy. *State v. Gaston*, 201 Conn. App. 276, 279 (2020).

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8. *State v. Stevenson*, 179 Conn. App. 908 (2018) (affirming sentence).

Mr. Stevenson appeared before me at a 2016 violation of probation hearing in which he was alleged to have violated for the third time a probation stemming from a 1996 felony conviction for having sexual contact with a minor. The third violation was based upon a refusal to comply with sex offender conditions of probation. Determining that the probationer presented too great a risk to society's children by failing to comply with such critical conditions, I imposed the maximum sentence of three years and nine months in jail. On appeal, the defendant argued that I had abused my discretion in finding that he was not amenable to probation and in imposing the maximum sentence. The sentence was affirmed in a summary *per curiam* order by the Appellate Court.

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9. *State v. A.N.*, KNL-CR15-127408-T.

Pursuant to § 54-45 (b) of the General Statutes of Connecticut, I was designated by the Chief Court Administrator to sit on a three-judge panel for this murder trial in which the defendant raised a defense of lack of capacity due to mental disease or defect, pursuant to § 53a-13 of the General Statutes of Connecticut. The accused, who was mentally ill, killed an acquaintance of his father by fatally stabbing the victim in the throat with a bayonet. The defendant then surrendered to police and provided several writings detailing delusional claims of abuse, and made claims that he had been attacked by a wolf and that he previously had killed himself. The court acquitted the defendant due to his lack of capacity and ordered him committed to the psychiatric security review board.

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10. *State v. Megos*, K21N-CR12-118643-T; K21N-CR12-118644-T; K21N-CR12-118645-T; K21N-CR12-118646-T; K21N-CR12-118647-T; K21N-CR12-119064-T, *aff'd*, 176 Conn. App. 133 (2017).

Mr. Megos had been on probation imposed by a previous judge by way of a negotiated plea agreement involving six larceny convictions. Among his underlying crimes was taking a $1,600 deposit from a woman with disabilities who used a wheelchair, under the guise that he would let her rent an apartment. The apartment never was made available to her, and the deposit was not returned. Another conviction stemmed from a $4,550 deposit toward a home purchase; the home was sold to another, and the deposit was not returned. Within months of starting his probation, Mr. Megos pretended to be his business partner and took $2,925 from a mother with disabilities who was looking for a new home after her own was lost to a fire. After months of lies about why the woman and her family could not move into the residence, it was determined that the home had been condemned the entire time. Following a contested violation of probation hearing, I found Mr. Megos in violation of probation, revoked the probation, opened the prior judgment, and imposed a new sentence of five years in jail.

The defendant argued that I erred in finding him in violation of probation, that I abused my discretion in admitting evidence of his prior crimes, and that I abused my discretion by revoking his probation and imposing the five-year jail sentence. The Appellate Court disagreed on all counts, and my judgment was affirmed.

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

1. *State v. Gray*, K10K-CR18-341394 (Nov. 24, 2020). Copy supplied.

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2. *State v. Danielson*, H14H-CR20-739054 (Sept. 10, 2020). Copy previously supplied in response to Q13c.

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3. *State v. Hickey*, LLI-CR07-123938 (May 28, 2019). Copy supplied.

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4. *State v. Grier*, H14H-MV17-508734 (Apr. 30, 2018). Copy previously supplied in response to Q13c.

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5. *State v. Sanchez*, H14H-CR16-687935 (Nov. 15, 2017). Copy previously supplied in response to Q13c.

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6. *State v. Gore*, HHD-CR17-690346-T (Aug. 31, 2017). Copy previously supplied in response to Q13c.

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7. *State v. L.W.*, HHD-CR16-257296-T (July 10, 2017). Copy previously

supplied in response to Q13c.

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8. *State v. Robles*, HHD-CR17-689306-T (Apr. 20, 2017). Copy supplied.

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9. *State v. Morell*, K10K-CR15-330195 (July 18, 2016). Copy supplied.

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10. *State v. Kaczmarczyk*, K10K-CR08-296700; K10K-CR08-299412; K10K-CR08-299425, 2016 WL 353327 (Conn. Super. Ct. Jan. 4, 2016).

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

My database search indicates that certiorari has not been requested or granted in any of my cases.

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

State v. L.C., H14H-CR19-733038 (AC 192888).

This was an appeal to Connecticut's Appellate Court from an oral bond ruling. The case was presented to me for a judicial pretrial on October 25, 2019, because the parties believed that they were unable to come to a resolution of the case short of trial. In a judicial pretrial conference, the prosecution decides which charges it will pursue, and the court decides, after hearing from the parties, what the corresponding sentence would be if the accused were to accept the conviction(s) sought by the prosecutor. The defendant faced six counts of failure to comply with the sex offender registration requirement stemming from his prior conviction

for a sexually violent offense, which carried a maximum sentence of up to 30 years in jail if convicted. I determined that the defendant last had been compliant with the registry in 2007, more than ten years earlier. The state noted that the defendant also had an extensive criminal record. The case progressed to a judicial pretrial with me when the defendant rejected a prosecutor's offer of probation, requiring him to comply with the registry. Considering the defendant's clear refusal to comply with the registry for a number of years, the fact that he had not registered as a sex offender in over a decade, and his rejection of the probation offer that showed he had no intention of complying with the lifetime registration requirement, I extended an offer of five years in jail (out of his 30-year possible maximum) if the defendant wished to plead guilty to the charges pursued by the state but without accepting a term of probation.

Connecticut's Practice Book provides judges the discretion to modify or revoke at any time a defendant's terms and conditions of release (including bail). I allowed the parties to be heard on bond and on the conditions of release. At the time, the defendant was at liberty after posting a $10,000 surety bond, and he had not petitioned the court (either pro se or through counsel) to be relieved of his lifetime registration requirement.

After the hearing, I increased the defendant's bond by $250,000 and added a condition of release that he comply with the registration requirement. At defense counsel's request, the case was continued to November 22, 2019. The defendant appealed the bond increase, and late in the afternoon of November 20, the Appellate Court ordered me to "conduct a hearing for reconsideration of the bond" with a focus on whether it was greater than necessary to assure the defendant's appearance in court. At that hearing, the state noted that the defendant in fact had eight prior failure to appear convictions. Defense counsel conceded that the defendant still was not compliant with the registry since his August arrest for six felonies. Nevertheless, consistent with the Appellate Court's instruction, I vacated the $250,000 bond increase, which released the defendant on the $10,000 surety bond that previously had been posted, but I warned him of the legislature's valid interest in alerting the public to sexually violent recidivism. On November 27, 2019, I canvassed the defendant on his risk of jail if convicted after trial, and on his rejection of my offer. I scheduled his case for trial before another judge, to begin in January 2020, but the state decided to drop the case.

State v. M. B.-R., H14H-CR17-692219 (AC 174229).

This was an oral bond ruling that was appealed to Connecticut's Appellate Court. The defendant was accused of molesting a child in the restroom of a senior center. He was charged with Sexual Assault in the Third Degree and Risk of Injury to a Minor, both felonies. He had a lengthy record of state and federal convictions for crimes of violence. The arraignment judge set a bond and ordered review of the defendant's competency to stand trial. I preside over such competency hearings as the presiding judge of criminal matters. At a contested competency hearing

before me, evaluators recommended that the defendant be found not competent and not restorable to competency; they did not believe the defendant qualified for civil commitment, and made absolutely no recommendations as to any further supervision, treatment, or counseling of the defendant. I presided over a lengthy hearing during which I asked questions of witnesses and weighed the arguments of the parties. I found, over objection from the state, that the defendant was not competent, and ordered (against the recommendation of the evaluators) further efforts at restoration to competency. I also ordered an increase in the defendant's bond for public safety, as the defendant was out on bond and frequenting the same senior center where the allegations arose. I found the defendant's liberty interest to be outweighed by the stated public safety interests. The increase in bond was appealed, review was granted, and the Appellate Court granted the relief sought (directing me to reinstate the bond that initially had been posted).

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.

Almost all of my oral and written decisions have been unpublished, as is true for many trial-level (Superior Court) rulings in state court in Connecticut. Written decisions are filed with the Clerk. On occasion (as when a ruling is appealed), the clerk or the court itself might order a transcript of a hearing that the judge can sign as the decision in the absence of a written opinion. Those decisions (and other decisions, particularly those that are lengthy or that were subject to a lengthy contested hearing) often are submitted by the clerk to be made available online, even though such decisions remain unpublished.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

State v. Grier, H14H-MV17-508734 (Apr. 30, 2018). Copy previously supplied in response to Q13c.

State v. Morell, K10K-CR15-330195 (July 18, 2016). Copy previously supplied in response to Q13d.

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

I have never sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

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

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

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

As the presiding judge of criminal matters, one of my main responsibilities is conducting judicial pretrial discussions with the parties. While the prosecution decides the charges to be pursued, the court determines the sentence that would accompany any offer at resolution short of trial. Accordingly, criminal defendants occasionally file complaints or request the court's recusal, particularly when they disapprove of a conveyed offer. Generally, when a criminal defendant requests my recusal, I note the request in open court and I allow the parties to be heard so that I can assess the ethical and legal validity of the raised claim. I immediately identify any circumstances that could present even the appearance of impropriety or of a conflict of interest in presiding over the case, and I consider our ethical canons and rules of practice that govern recusal. However, I can recall one instance in which I referred to another judge the assessment of any potential need for recusal, particularly because it involved a self-represented defendant whose competency to stand trial and psychiatric health had been questioned.

In State v. S.Q., H14H-CR17-692104; CR15-187257-T; CR16-189413-T; CR17-192823-T; CR17-192824-T; CR17-192839-T; CR17-692105; CR18-140683-T; CR18-140684-T, my recusal was requested by a self-represented criminal defendant who had about 20 pending cases, and whose competency to stand trial was under review. Upon arraignment before a different judge, the defendant had been recommended for an emergency commitment evaluation at a local hospital, due to the imminent threat she potentially presented to herself or to others. The defendant declined counsel and was being assessed for forced medication at the jail. The parties stipulated to defendant's competency, and on or about October 25, 2017, she filed a complaint against me in which she requested my recusal, primarily in objection to my order that she obtain a mental health evaluation and that she comply with any related recommendations of the evaluators. Because the defendant was pro se and was dealing with psychiatric concerns, I noted the complaint on the record and ordered the clerks to schedule a hearing before another judge to assess her recusal request. The court that reviewed the recusal issue (Schuman, J.) conducted a full hearing and issued a written ruling finding

that I did not need to recuse myself. I also saw no reason to recuse myself, and so I denied the request for recusal.

In another instance, I recused myself when, during a judicial pretrial, I learned that I likely knew at least one victim in a series of burglaries involving thefts from, and of, motor vehicles. Given the date and location of the burglaries, I informed the parties that something was stolen from my wife's vehicle in the area and timeframe of the thefts, but that she did not pursue criminal investigation of the matter (she simply informed the police). While I believed that I would have been able to preside over the matter without bias, I decided it was proper to recuse myself, and the parties agreed. I ordered transfer of the matters to another court, but allowed the parties to select the receiving court without my input. I do not recall the defendant's name.

There have been times when a defendant is someone I represented several years before while I was a public defender. If this is recognized at judicial pretrial, I inform the parties, allow them to decide whether to request my recusal, and then I make a record in open court of my prior representation of the defendant. I do not believe either party ever has sought my recusal in such instance. When this is realized on the record in court, I have asked the parties to approach at sidebar, have informed them, and have allowed them the opportunity to consider outside the presence of the court whether they seek my recusal. On the record, I note my prior representation and ask the parties whether either seeks my recusal. I do not believe anyone ever has sought my recusal in such an instance.

There also was a domestic violence case before me at one point wherein I had to issue a protective order upon disposition of the matter. In so doing, I recognized that the minor child of the protected party was a girl whom I had coached in soccer. The names and addresses of domestic violence victims are redacted from police reports, and often are not raised in pretrial discussions, and in this particular case, the child had a last name that was different than the defendant's, so I was unaware until that moment that I had coached the child. Upon recognizing the name, I asked the parties to approach the bench, noted the issue at sidebar, and allowed the lawyers to speak with the defendant, the victim's advocate, and the victim to determine whether anyone wished me to recuse myself. On the record, I noted the potential appearance of a conflict but that my connection was not discovered until issuance of the protective order, and asked whether either party wished to be heard on the issue, or whether they sought recusal. I recall that neither party sought my recusal, and that we proceeded in accordance with the agreement to resolve the case.

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

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

elective office or unsuccessful nominations for appointed office.

Other than judicial service, my only other public employment was as a public defender from 2003 until 2014, when I became a judge. The Public Defender Commission in Connecticut appoints employees of the Connecticut Division of Public Defender Services. I have never held political office.

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

In October of 2008, I took a few days off from work to volunteer for the Presidential and Vice-Presidential campaign of Barack Obama and Joseph Biden. Three friends and I drove to Warren, Ohio for door-to-door canvassing on a volunteer basis. We were not compensated.

In 2013, my father ran for Board of Education in my hometown of Norwalk, Connecticut. I canvassed for him and handed out literature on two days in October of 2013. I was not compensated.

In 2018, I served on the Criminal Justice Committee of the transition team for Connecticut's then-Governor-elect Ned Lamont and then-Lieutenant Governor-elect Susan Bysiewicz. I did not receive compensation, and, as a judge, I did not offer any policy recommendations. My role was to provide input as to the state of the law, and as to the potential impact upon the judiciary and upon those who appear in court of certain policies, if pursued by the administration. The Honorable Patrick L. Carroll, III, Chief Court Administrator for the State of Connecticut, also served on this 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 have not served as a law clerk to a judge.

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;

Summer 2003
Law Office of Kevin C. Ferry
77 Lexington Street
New Britain, Connecticut 06052
Temporary Attorney

2003
Office of the Public Defender
17 Belden Avenue
Norwalk, Connecticut 06850
Per Diem Attorney

2003 – 2014
Office of the Public Defender
121 Elm Street
New Haven, Connecticut 06510
Attorney (Assistant Public Defender)

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

I have not 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.

Aside from writing a civil appellate brief for Attorney Ferry, my legal career before becoming a judge was as a public defender, providing legal defense for indigent criminal defendants in trial-level state court from 2003 to 2014. I represented clients from arraignment upon initial presentment to the court after arrest, all the way through final disposition by plea or after trial.

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

My career as a public defender was in the general defense of criminal matters, ranging from drug offenses to theft, from robbery to assault, and from burglary to domestic violence crimes. I also was assigned cases on a

specialized docket for serious domestic violence offenders, where defendants either had a lengthy history of domestic violence arrests, or allegations that involved more serious injuries or offenses.

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 a public defender, my work entirely was in litigation, though well over ninety-nine percent of criminal cases in New Haven Superior Court at that time resolved short of trial. I was in court on a daily basis throughout that employment.

i. Indicate the percentage of your practice in:
   1. federal courts: 0%
   2. state courts of record: 100%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 0%
   2. criminal proceedings: 100%

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

I can recall trying five cases to verdict; I was sole counsel in three of the jury trials and chief counsel in a fourth jury trial, and I served as associate counsel in a murder trial to the court. I also have served as sole counsel in violation of probation hearings; those matters are tried to the court as a matter of law.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

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

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

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

a. the date of representation;

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

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

1. *State v. Ames*, 179 Conn. App. 486 (Conn. App. Ct. 2017), *cert. denied*, 327 Conn. 908 (Conn. 2017); New Haven Superior Court.

Ms. Ames was tried to a three-judge court in 2013 for Murder, Felony Murder, and Attempt to Commit Robbery in the First Degree in a fatal stabbing of a bartender. With co-counsel, I assisted in pretrial negotiations, drafting and arguing motions, and presenting claims of self-defense and of extreme emotional disturbance. After a bench trial, the court (Hon. Jon C. Blue, Presiding; Hon. Thomas V. O'Keefe, Jr.; and Hon. Maureen M. Keegan) convicted the defendant of murder, but acquitted her of felony murder and of attempted robbery.

Principal Counsel for the Defense

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2. *State v. D.B.*, N23N-CR12-124902. New Haven Superior Court, The Honorable Raheem L. Mullins (2012).

My client was accused of being a youthful offender for allegedly participating with others in attacking and beating the victim. The victim allegedly identified his attackers simply as a group of black males. The police said the victim pointed out a group of young men who were on a porch as having been involved, but the victim said that the police canvassed the area, detained a number of young men, and took the victim to their location for identification. As we prepared for trial, I asked my colleague to draft a motion to suppress the defendant's identification as unnecessarily suggestive. My investigator took statements from and subpoenaed several neighborhood witnesses who (though reluctant) were prepared to testify at trial that the defendant was not involved in the assault but had arrived at its scene after the crime had concluded. The day before the trial was to occur, the victim arrived at my office, unannounced, in response to a subpoena by the state. He noted that he had not spoken with any member of the prosecutor's office but wanted to explain that he misidentified my client as one of his assailants. The prosecutor also had subpoenaed witnesses to testify at the trial, and spoke with the victim to make sure that his statement was accurate and not the product of undue influence. Once satisfied, the state declined prosecution and we made a record of the circumstances. I moved to dismiss the case and the motion was granted by Judge Raheem L. Mullins, now a Justice of the Supreme Court of Connecticut.

Co-Counsel for the Defense

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Counsel for the State

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3. *State v. Berrios*, N23N-CR07-69875; CR10-110691; CR11-122118; CR11-122119. New Haven Superior Court, The Honorable Karen Nash Sequino (2012).

I represented Mr. Berrios in criminal matters for which judicial pretrial negotiations were held on January 20, 2012. The state sought an admission to the charge of Violation of Probation and guilty pleas to several felony charges. The judge offered a total effective

sentence of ten years in jail suspended after the service of five years, followed by five years of probation in exchange for the pleas and the admission, and the defendant accepted the offer on the same day. Pleas were entered on the record and the matters were continued for sentencing to March 23, 2012. However, on March 19, Hartford's Office of the Victim Advocate (OVA) filed a motion through which its attorneys asked the court to allow the victim to be heard and to reconsider the agreed-upon sentence. On the scheduled sentencing date of March 23, the court allowed the victim to be heard, and OVA made its objection to imposition of the agreed-upon sentence, while counsel for the parties asked the court to honor its agreement. Thereafter, the court allowed the defendant to withdraw his pleas and continued the matters for further discussion.

The state and the defense separately filed briefs in support of their joint request that the court honor the negotiated agreement; I believe the state moved for specific performance, and on behalf of the defendant, I argued, citing applicable law, that the agreement should be honored because the law favors plea agreements (and parties rely upon them), because the offer remained reasonable, and because of the limited role victims are given as non-parties to criminal proceedings. Upon consideration of the filed motions, and after a hearing on the record, the judge honored the original plea agreement.

Counsel for the State

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Hakima Bey-Coon
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4. *State v. E.W.*, NNH-CR10-111305-T. New Haven Superior Court, The Honorable Brian T. Fischer (2011).

My client was charged with Assault in the Third Degree, Unlawful Restraint in the Second Degree, and Criminal Trespass in the First Degree in a domestic violence case.

The state alleged that he struck the complainant in the head with a full can of beer, that he pushed her, and that he trespassed on her property, but I was able to secure his acquittal by focusing on the elements of the crimes, highlighting inconsistencies in trial testimony, and by publishing to the jury a recording of the complainant's non-emergency police call.

Additionally, before closing arguments, the trial judge had a charging conference in which the lawyers could suggest wording that the judge would use while instructing the jurors as to pertinent law to be considered during deliberations. I noted in my proposed instructions that the court's instruction on unlawful restraint appeared to merge the mens rea of specific intent with the actus reus of restraint, and so I asked the court to split the instruction into three elements: the restraint of another, the specific intent to restrain, and the lack of consent for such restraint. I argued that the court's instruction might confuse jurors, particularly because they would be instructed on Assault in the Third Degree, the instruction of which clearly separated intent from physical conduct. In denying my request, the court noted that its instructions strictly adhered to the model jury instructions provided by our Judicial Branch. After the acquittal, I pursued a change in the model jury instructions for the benefit of the public. I contacted two members of the Criminal Jury Instructions Committee – judges before whom I had practiced – with my concerns, and my suggestion subsequently was presented and was adopted. Ten years later, this revised instruction remains the model instruction for jury trials.

Counsel for the State

I believe the trial prosecutor was:
Marc G. Ramia
Senior Assistant State's Attorney
400 Grand Street
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(203) 236-8130

Co-Counsel for the Defense

Alton (AJ) K. Burton, Jr.
Vice President of Federal Regulatory Affairs
Frontier Communications
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5. *State v. Oliphant*, 115 Conn. App. 542 (Conn. App. Ct. 2009). New Haven Superior Court, The Honorable Elpedio N. Vitale (2007).

Mr. Oliphant was on a felony probation for which he was exposed to eight years in jail (his underlying sentence was 15 years in jail, suspended after serving seven years). One basis of the alleged probation violation was a domestic violence incident in which Mr.

Oliphant was accused of punching the complainant in the eye; she was referred by police to the hospital for treatment of the injury. Days later, when uniformed officers went to serve an arrest warrant upon the accused, he allowed them to affix the handcuffs to one wrist, but then he used the unsecured handcuff to strike one officer in the head. From there, the probationer was alleged to have engaged in a lengthy stretch of noncompliance that involved punching officers, threatening them with a tree branch, and removing from his chest Taser probes used by the officers to try to subdue him. Eventually, four officers took Mr. Oliphant into custody, and this misconduct served as an additional basis for the probation violation.

I represented Mr. Oliphant until, during the hearing, he asked to represent himself. At the conclusion of the hearing, the Honorable Edpedio N. Vitale found Mr. Oliphant in violation of probation and imposed a jail sentence of six and one-half years.

Counsel for the State

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6. *State v. R.W.*, N23N-CR09-90532. New Haven Superior Court, The Honorable William Holden (2009).

My client, who was on parole at the time, was charged with Escape in the First Degree, a felony. At trial, I was able to exclude hearsay testimony from the defendant's mother that she had telephoned his parole officer to inquire whether he was in custody as she had not seen him in several weeks. I successfully objected to the state calling a rebuttal witness, and also prevented the state from being permitted to reopen its case in chief. I objected to the state's closing argument (upon completion, and outside the presence of the jury), noting that it cited testimony not in evidence, and I prepared a curative instruction that the trial court read to the jury. After the trial, the jurors explained that they had taken a secret ballot at the close of evidence, and that they would have (at that point) voted unanimously to convict my client. My closing argument focused on the text of the law, contending that the defendant's conduct, as alleged, did not fit the traditional definition of an "escape," and argued that parole officers had not done enough to prove the state's case. The jury acquitted my client.

Counsel for the State

Marc G. Ramia
Senior Assistant State's Attorney
400 Grand Street
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(203) 236-8130

7. *State v. DeMaio*, 107 Conn. App. 462 (Conn. App. Ct. 2008), *cert. denied*, 287 Conn. 923 (Conn. 2008). New Haven Superior Court, The Honorable Bruce L. Levin (2006). The Honorable Bruce L. Levin presided over this suppression hearing and jury trial. I did not represent the defendant on appeal.

My client, Mr. DeMaio, was arrested after Mr. DeMartino told East Haven, Connecticut police officers upon his arrest that my client had sold him drugs on previous occasions. Two weeks later, Officer Cari saw the defendant riding his bicycle at night and called for officers in an unmarked police vehicle to surveil him. Officers Mulhern and Kelly followed Mr. DeMaio into New Haven and parked their car facing him, with an unobstructed view of the accused. Officer Mulhern testified about the defendant's pre-arrest actions, including what Officer Mulhern believed to be a hand-to-hand drug transaction. I recall that, at the suppression hearing, Officer Kelly testified that he saw absolutely none of the interactions reported by Officer Mulhern, despite sitting beside him in an unmarked police vehicle that was parked with an unobstructed view of the defendant, upon whom they were conducting surveillance. However, I believe Officer Kelly reported that the defendant rode off in an erratic manner on his bicycle. The defendant was stopped by police, was searched, and was found in possession of cocaine.

I moved to suppress the stop and the search of Mr. DeMaio, but the court found reasonable and articulable suspicion for the defendant's seizure. After a jury trial, the defendant was found guilty of possessing narcotics and of doing so within 1,500 feet of a school. He was sentenced to five years in jail, followed by two years of special parole.

Counsel for the State

Donald MacCalmon (retired)
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8. *State v. C.M.*, N23N-CR06-60826. New Haven Superior Court, I believe the trial judge was The Honorable Elpedio N. Vitale (2007).

My client and the complainant were in a dispute following the sale of a bread truck and its delivery route. My client was charged with assaulting the complainant, rendering him unconscious. To the best of my recollection, I successfully moved for judgment of acquittal as to a breach of peace charge. Though my client was the only person in the dispute to have thrown a punch, I argued that my client anticipated an imminent assault, causing him to act in self-defense in order to prevent being assaulted.

Counsel for the State

I believe the trial prosecutor was:

Devant J. Joiner
Assistant State's Attorney
20 Franklin Square
New Britain, CT 06051
(860) 515-5250

9. *State v. Riggsbee*, 112 Conn. App. 787 (Conn. App. Ct. 2009). New Haven Superior Court, The Honorable Maureen M. Keegan (2007). The Honorable Maureen M. Keegan presided over this bench trial and violation of probation hearing. I did not represent the defendant on appeal.

The defendant wished to contest two cases alleging domestic violence and another two alleging violations of probation. One of the criminal cases alleged an assault and the other involved his presence at the victim's home in violation of a protective order. The probation violations were based upon those two arrests. I successfully moved for joinder because the defendant wished to try the cases to the court.

At trial, I argued that the state was unable to meet its burden of proof as to the elements of the charged crimes, and at sentencing, I argued that the defendant was at the victim's residence in violation of the protective order because she had invited him to Thanksgiving dinner. The defendant was convicted at trial and the court's judgments were affirmed on appeal.

Counsel for the State

Marc G. Ramia
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(203) 236-8160

10. *State v. Gonzalez*, 278 Conn. 341 (Conn. 2006). New Haven Superior Court, The Honorable Richard M. Marano.

During a police investigation into suspected narcotics dealing, they conducted a "field interview" of a suspected drug dealer. When the suspect's cellular phone rang, a detective answered it without permission, and Mr. Gonzalez was calling to schedule the delivery of additional drugs. When the police arrested Mr. Gonzalez, I was appointed to represent him. I negotiated an offer from the state, but Mr. Gonzalez wished to contest the police conduct, so I filed and argued on his behalf a motion to suppress the interception of the telephonic communication from Mr. Gonzalez. The motion was denied after a contested hearing, and Mr. Gonzalez entered a plea of nolo contendere conditioned upon his right to appeal the denial of his motion. Though the public defender's office had an appellate unit, this case was assigned to remain with me for appeal, which I briefed and argued. The Supreme Court of Connecticut affirmed the denial of the motion to suppress.

Counsel for the State

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

    Outside of the courtroom, I have served on the judiciary's Education Committee (developing the curriculum for the training of new and experienced judges) from 2017 to 2020, trained new judges upon their appointment to the bench, served since 2018 on the Judicial-Media Committee (to foster and improve the relationship and concerns of the media and the judiciary), and was selected by the Chief Justice of the Supreme Court of Connecticut to serve as a co-chair of the Jury Selection Task Force that aimed to eliminate racial and ethnic bias from our jury trials. I have served since early 2021 on the New England Regional Judicial Opioid Initiative, in which representatives from Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont share information in an effort to effectively address substance abuse and addiction.

    In 2018, I served, along with the Chief Court Administrator for our state, in a non-policy role on the Criminal Justice Committee for our then-incoming Governor and Lieutenant Governor.

    While I never personally performed lobbying activities, there was a period of time when I served as Treasurer of the Connecticut Judges Association, and, in that role, filed financial reports with Connecticut's Office of State Ethics regarding the organization's lobbying expenditures. The organization retained lobbyists primarily to advocate for fair judicial compensation.

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

    None.

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

    None.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I do not anticipate many conflicts of interest due to my work as a judge or as a public defender, other than through defendants I might have represented in criminal court who face federal prosecution. My wife is Managing Director and Counsel in the management liability claim department at Travelers, but the majority of the cases her team handles are litigated outside of Connecticut. I would identify and assess any potential conflict that might arise, and would recuse myself where required by 28 U.S.C. § 455 (b) (5), by Canon 3 of the Code of Conduct for United States Judges, or by any other ethical or legal rule or principle.

    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 continue to conduct myself in a manner that avoids conflicts of interest, but where they (or their potential appearance) arise, I will adhere to the mandates of 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other applicable rule or ethical canon. Presently, I inform the parties to any case where even the appearance of a conflict exists, allowing them to raise any request for recusal, and, if confirmed, I would continue to do so.

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

While my career has been dedicated to public service through indigent defense and through work as a judge, and while that work has prevented outside legal practice, I have given back to the community by speaking at and by hosting students from several schools. Additionally, I participated in the Truancy Prevention Program in Hartford, aiming to prevent middle school students from discontinuing their education. I also speak with interns from the Lawyers Collaborative for Diversity and from within the Judicial Branch internship program.

As a public defender, I ran our internship program for undergraduate and law students, and as a judge I have assisted in the training of new judges. I also moot law students from Quinnipiac University and from the University of Connecticut in their annual preparation for the Hispanic National Bar Association moot court competition.

Finally, I engage in work-related activities intended to improve the judicial system or the practice of law, such as by co-chairing the Professionalism Committee of the Connecticut Bar Association, and by serving as co-chair of the Jury Selection Task Force, which worked toward eliminating racial and ethnic bias in jury trials.

26. **Selection Process**:

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

On March 9, 2021, I submitted to United States Senators Richard Blumenthal and

Christopher Murphy my application for nomination. On March 10, 2021, I was notified by Senator Blumenthal's staff that my materials would be forwarded to the Advisory Committee. On April 6, 2021, I interviewed with Senator Blumenthal and Senator Murphy. On April 16, 2021, I was notified by staff for Senator Blumenthal that my name was being submitted to the White House. On April 18, 2021, I was contacted by the White House Counsel's Office, and interviewed with attorneys from that office on April 19, 2021. Since April 21, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 2021, my nomination was submitted to the Senate.

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

No.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Hampton Dellinger
Nominee to be Assistant Attorney General, Office of Legal Policy

1. Should law firms undertake the pro bono prosecution of crimes?

   RESPONSE: My understanding is that local, state, and federal authorities are responsible for the prosecution of crimes and should use proper resources when doing so.

2. Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a "living constitution"?

   RESPONSE: I believe the Constitution is an enduring document and I know it constitutes America's supreme law. Judges are duty bound to apply it faithfully.

3. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

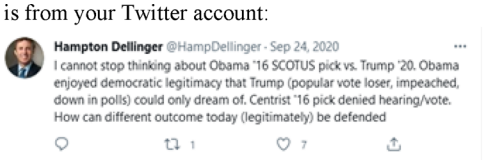
   RESPONSE: My understanding is that local, state, and federal authorities are responsible for the prosecution of crimes and should use proper resources when doing so.

4. This is from your Twitter account:

   a. To whom were you specifically referring to in this tweet?
   b. Were you referring to Pat Cipollone?
   c. Were you referring to Pat Phiblin?
   d. Were you referring to Judge Starr?
   e. Were you referring to General Barr?
   f. Do you believe the aforementioned lawyers have been "debase[d]"?
   g. Do you still stand by these comments?

   RESPONSE: I did not intend any specific reference. If confirmed, I would of course adhere to the Justice Department's social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in government demonstrates my ability to work effectively with career professionals as well as appointed and elected leaders regardless of party.

5. This is from your Twitter account:



   a. This tweet refers to now-Attorney General Merrick Garland. In the short time since Judge Garland has served in his Office, the Justice Department has been weaponized, at the behest of President Biden, to attack election-integrity laws in multiple States attempting to institute common-sense election reforms to prevent election fraud. Just yesterday Judge Garland dropped a case in Vermont against a hospital that forced employees to perform abortions. He has halted federal death penalties. Do you still stand by your comment that Judge Garland is a "centrist"?
   b. Do you stand by your statement that President Trump lacked "democratic legitimacy"?
   c. At what level of polling support will President Biden lack democratic legitimacy? Some polling currently has him under 50%.

RESPONSE: I have tremendous respect for Attorney General Garland, and I recognize that whichever candidate assembles 270 electoral votes is a constitutionally legitimate President. If confirmed, I would of course adhere to the Justice Department's social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in government demonstrates my ability to work effectively with career professionals as well as appointed and elected leaders regardless of party.

6. This is from your Twitter account:

During President Trump's administration and tenure, for the first time in many decades the United States did not enter into a war and did not suffer a terrorist attack on American soil. In fact, President Trump brokered a historic peace agreement in the Middle East, shortly after this tweet was authored, the Abraham Accords.

   a. What facts were you relying on when you claimed that President Trump posed such a "great[] national security risk to America"?
   b. Is your view that President Trump posed a greater national security risk than, say, Julius and Ethel Rosenberg or Alger Hiss?

RESPONSE: If confirmed, I would of course adhere to the Justice Department's social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in

government demonstrates my ability to work well with career professionals as well as appointed and elected leaders regardless of party.

7. President Trump's appearance in Lafayette Square on June 1, 2020, following rioting outside the White House prompted the mainstream media to describe the event as a "photo op." An Inspector General Report released on June 8, 2021, found the following:

> that the USPP [U.S. Park Police] had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John's Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President's potential movement until mid- to late afternoon on June 1—hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.[1]

   a. Do you accept the results of the independent Inspector General investigation?
   b. What commitments can you give me that you will not similarly jump to conclusions as the Assistant Attorney General for the Office of Legal Policy evaluating cases before you like you did when discussing the clearing of Lafayette Square?

RESPONSE: I respect the work and independence of the federal government's Inspectors General, and I know of no grounds to question the results of the Lafayette Square investigation. If I am confirmed to be Assistant Attorney General for the Office of Legal Policy, while I will not be deciding cases, I promise to thoughtfully and fairly evaluate information that comes before me.

8. This is from your Twitter account:

[1] Office of the Inspector General, Department of the Interior, "Review of U.S. Park Police Actions at Lafayette Park," June 8, 2021, available at: https://www.doioig.gov/reports/review-us-park-police-actions-lafayette-park

a. Where in the text of the Constitution (not Supreme Court precedent) does the right to abortion exist?
b. Under what theory of jurisprudence does a prohibition on prenatal homicide by a duly elected legislature not qualify as "law"? Please be specific.
c. From where does the "natural right" to abortion arise?
d. There is near-universal belief in the natural right to life, from the Declaration of Independence to Article 3 of the Universal Declaration of Human Rights. What principles of natural reason allow you to deduce that children lack these rights prior to their birth?

RESPONSE: My legal understanding of those rights is guided by the Supreme Court's interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Case*y, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

9. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

RESPONSE: No.

10. Do you agree with the following statement: "Respect for human life finds an ultimate expression in the bond of love the mother has for her child. … Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained"?

RESPONSE: I am not in a position to evaluate the statement generally but, at an individual and personal level, there has been nothing more meaningful to my wife Jolynn and me than being parents.

11. A now-confirmed Justice Department nominee once said, "As a civil rights lawyer with matters that regularly go before the Supreme Court, I can't underscore how dangerous it will be to have [then-Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure." For the questions below, please also explain why you agree or disagree with the statement:

a. Do you agree that Justice Kavanaugh is "dangerous" and "easily unhinged"?
b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?

RESPONSE: I have great respect for the Supreme Court of the United States and fully recognize Justice Kavanaugh's service as an Associate Justice.

12. Judge Garland was "not familiar with the statement quoted [in the question above]" but "[b]ased on my experience serving with Justice Kavanaugh on the D.C. Circuit for many years, I would not describe him that way." Do you agree with Judge Garland?

RESPONSE: I do not know Justice Kavanaugh, but I have no basis on which to disagree with the Attorney General.

13. The Attorney General also expressed his confidence in Justice Kavanaugh's ability to "be fair in hearing cases"? Do you agree with Judge Garland?

RESPONSE: I have no basis on which to disagree with the Attorney General.

14. During your hearing, you praised Judge Garland for his commitment to preserve the "independen[ce]" and the "integrity" of the Justice Department. You stated that you were very comfortable with Judge Garland's mandate to depoliticize the Justice Department and remove any remaining partisanship at the Justice Department.

    a. Do you believe that the Justice Department, under Attorney General Bill Barr was similarly "independent" and filled with "integrity"?
    b. Do you believe that the Justice Department, under Attorney General Eric Holder, was "independent" and filled with "integrity"?
    c. Do you believe that the Justice Department, under Attorney General Mike Mukasey, was "independent" and filled with "integrity"?
    d. Do you believe that the Justice Department, under Attorney General Alberto Gonzales, was "independent" and filled with "integrity"?

RESPONSE: In commenting on Attorney General Garland's independence and integrity, I did not intend to compare him to any other person who has served in the position.

15. How do you intend to fulfill Judge Garland's mandate to maintain the independence and integrity of the Justice Department, assuming that you are confirmed as the AAG of OLP?

RESPONSE: I believe the wide range of clients and viewpoints I have represented, as well as the strong working relationships I have had with elected, appointed, and nonpartisan career officials, signals my understanding of the need for law enforcement agencies such as the Justice Department to maintain independence and integrity. In addition, since being nominated, I have spoken with prior AAGs for OLP spanning several administrations (Republican and Democrat), and I appreciate their advice. If confirmed, that would guide me, along with input from career attorneys in OLP, on ways to maintain the independence and integrity of the Office in particular and the Department generally.

16. Given your opposition to President Trump's judicial nominees, do you agree that it's reasonable for liberals or conservatives to prioritize jurisprudence over personal characteristics in judicial selection?

RESPONSE: I have never expressed and do not feel blanket opposition to the nominees of any prior President. I know several of President Trump's nominees (now confirmed) personally and I have very high regard for them. As a general matter, I believe unimpeachable integrity is critical for judges. That includes personal integrity and the professional integrity to follow the law, including controlling decisions of the U.S. Supreme Court.

17. Given your opposition to President Trump's judicial nominees, do you agree that it's possible to oppose diverse nominees without opposing them *because of* their diverse personal characteristics?

RESPONSE: Yes.

18. Your Twitter account contains inflammatory and vitriolic statements. A fellow Justice Department senior official told senators during her confirmation hearing that she "regret[s] the harsh rhetoric that [she has] used at times in the last several years." Do you similarly regret your Twitter commentary?

RESPONSE: I do regret the tone of some of my commentary, and, as noted above, I will follow the Justice Department's social media policy if confirmed. (See Justice Manual, § 1-9.000).

19. The Justice Department—specifically the Office of Legal Policy—often plays a role in judicial selection:

    a. What role do you see yourself playing in that process?
    b. What role do you see Senate consultation playing in that process?
    c. Will you require nominees to pass case-specific "litmus tests"?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who "reflect the full diversity of the American people – both in background and in professional experience." If confirmed, I will be proud to assist the President in that work as the Assistant Attorney General for Office of Legal Policy by assisting in researching and analyzing the records of potential candidates for judicial nomination, and would not involve any "litmus tests".

The Senate has a longstanding tradition, as I understand it, of suggesting possible nominees to the President, and of course the Senate has the "advice and consent" role prescribed by the Constitution.

20. How do you intend to prepare judicial nominees for hearings before the Senate Judiciary Committee?

RESPONSE: If I am confirmed, I look forward to learning more about the role of the Department in preparing nominees for hearings, but if involved in that preparation, I would intend to familiarize them with the way the Judiciary Committee conducts nominations hearings and the sorts of issues in which the members of the committee are interested.

21. Do you intend to work with home-state Senators to fill district-court vacancies? Why or why not?

RESPONSE: I understand the work of the Office of Legal Policy with respect to judicial nominations to be to assist in researching and analyzing the records of potential candidates for judicial nomination, not to select nominees. That is the job of the President, with the advice and consent of the Senate, as provided for in the Constitution.

22. Do you intend to consult with home-state Senators to fill Circuit-court vacancies? Why or why not?

RESPONSE: I understand the work of the Office of Legal Policy with respect to judicial nominations to be to assist in researching and analyzing the records of potential candidates for judicial nomination, not to select nominees. That is the job of the President, with the advice and consent of the Senate, as provided for in the Constitution.

23. Demand Justice is playing an outsized role in the selection of judicial nominees for President Biden. Do you agree with Demand Justice—that the ideal judicial nominee consists of an individual who tirelessly worked as a public defender (preferably federal), resisted the Trump Administration, and actively promoted liberal, civil rights ideals?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who "reflect the full diversity of the American people – both in background and in professional experience." I agree with his intention.

24. You have worked at several law firms throughout your career. Do you believe that Demand Justice's aversion to nominating law partners is beneficial to the federal judiciary and the people it serves?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who "reflect the full diversity of the American people – both in background and in professional experience." I agree with his intention.

25. Do you plan to coach judicial nominees prior to their appearances before the Senate Judiciary Committee?

    a. If yes, how do you intend to address the Democrat-initiated policy of questioning judicial nominees as to which cases were correctly decided?
    b. Why is it that the Biden-nominees are comfortable stating that four cases were correctly decided, but refuse to discuss any other cases?

RESPONSE: If I am confirmed, I look forward to learning more about the role of the Department in preparing nominees for hearings, but if involved in that preparation, I would intend to familiarize them with the way the Judiciary Committee conducts nominations hearings and the sorts of issues in which the members of the committee are interested.

26. President Trump nominated Ryan Bounds to the Ninth Circuit in 2018. His confirmation was withdrawn following the late discovery of his college writings—discussing sexual assaults and minorities, among other topics—that were made public after his nomination. Although you disclosed your college op-eds, you authored damning commentary about now-Justice Thomas, writing in college, that "these words—'justice' followed by 'Thomas'—are more than just an oxymoron. The words are an affront, an insult." Senator Blumenthal, who served as Ranking Member during your hearing, stated the following about Bounds' college writings in his opening statement (where he also served as Ranking Member) on May 9, 2018:

> And after his name went through the State's bipartisan selection committee process, it was discovered that he had purposely withheld *disqualifying information* from the selection committee. The selection committee said it would not have passed his name had it received that information. That fact alone would be deeply troubling—in fact, alarming. *But, in addition, equally so are his views on people of color, sexual assault, workers' rights, and LGBT individuals.* (emphasis added).

    a. Do you believe that opinions expressed in college writings are a suitable grounds for opposing a candidate's nomination to public office?
    b. Please explain why, according to the standard set by Senator Blumenthal enumerated above, you did not express "deeply troubling" and "alarming" comments about now-Justice Thomas, an incredibly accomplished black lawyer who overcame childhood poverty and the horrors of Democrat-imposed Jim Crow segregation policies to earn a nomination to the Supreme Court.
    c. Why shouldn't your comments about now-Justice Thomas—who earned every position he worked for and could not rely on a legal pedigree spanning generations—be disqualifying?

d. Do you regret contributing to Justice Thomas' "high-tech lynching" by perpetuating degrading, yet all-too-common, racist tropes about black men?

RESPONSE: I wrote those comments approximately 30 years ago while a student and at a time of a contentious and momentous nomination and confirmation hearing. I recognize and respect Justice Thomas's service on the Supreme Court.

27. In the same editorial where you authored blatantly racist commentary about now-Justice Clarence Thomas, you noted that millions of Americans "believe Anita Hill."

a. Do you "believe" Tara Reade, a woman who accused President Biden of sexual assault?
b. Do you "believe" the eleven women who accused New York's Governor Andrew Cuomo of sexual harassment?
c. Do you "believe" Vanessa Tyson, who accused Virginia's Lieutenant Governor, Justin Fairfax, of sexual assault?
d. Do you "believe" Meredith Watson, who accused Virginia Lieutenant Governor, Justin Fairfax, of sexual assault?
e. Do you "believe" Juanita Broaddrick, who accused President Bill Clinton of sexual assault?
f. Did you author any timely op-eds in any newspaper of record, criticizing the aforementioned men for their actions and proclaiming your whole-hearted support for the victims?

RESPONSE: I wrote those comments approximately 30 years ago at a time of a contentious and momentous nomination and confirmation hearing. I recognize and respect Justice Thomas' service on the Supreme Court.

28. Several weeks ago, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw "dozens of American flags" on Long Island pickup trucks, which she described as "just disturbing." Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?

RESPONSE: Flying the American flag is one of many ways to honor the United States.

29. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

RESPONSE: I believe law enforcement should respond to aggressors armed with a weapon.

30. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

31. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest gun control?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

32. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

33. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

RESPONSE: As a matter of legal ethics, a variety of conflicts can prevent representation of a potential new client, and additionally the contractual relationship between a firm and a client can involve considerations beyond conflict issues.

34. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

RESPONSE: No.

35. Do you agree with the proposition that some clients do not deserve representation on account of their:

    a. Heinous crimes?
    b. Political beliefs?
    c. Religious beliefs?

RESPONSE: No.

36. Should judicial decisions take into consideration principles of social "equity"?

RESPONSE: Judges should decide cases based on operative facts and governing law.

37. Do you believe that we should defund police departments? Please explain.

RESPONSE: I do not. I believe we need more resources allocated to public safety.

38. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

RESPONSE: Local government funding decisions are complex and depend on numerous factors. But I do not believe police departments should be "defunded". I believe we need more resources allocated to public safety.

39. Do you believe legal gun purchases have caused the violent crime spike?

RESPONSE: Increases and decreases in violent crime in different places are caused by a variety of different factors. I do not have enough information to answer your question.

40. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

RESPONSE: I do not have enough information to answer this question.

41. Is gun violence a public-health crisis?

RESPONSE: I agree with the President, who described gun violence as a public-health crisis.

42. Is racism a public-health crisis?

RESPONSE: According to the CDC, racism can "affect the well-being of millions of Americans."

43. Is the federal judiciary affected by implicit bias?

RESPONSE: I believe that based on our experiences we all can develop views that may affect our understanding, actions, and decisions in an unconscious manner. Public officials, including judges, must try to avoid allowing any improper bias to influence the execution of their responsibilities.

44. Do you have implicit bias? If so, what bias is it? How do you know if it's implicit?

    a. If you answered yes, how does implicit bias impact you in your day to day role as the founder of a law firm?

RESPONSE: As the Attorney General testified at his confirmation hearing, having biases, "is part of what it means to be a human being." But as he further explained, it is important to examine any biases we may have in order to try and overcome them and treat people with fairness. That's what I try to do.

45. Is threatening Supreme Court Justices right or wrong?

RESPONSE: It is wrong to threaten anyone with harm, Supreme Court Justices included.

46. Do you think the Supreme Court should be expanded?

RESPONSE: I look forward to the report of the Presidential Commission on the Supreme Court of the United States, which has been tasked with studying the public debate on Supreme Court Reform. I should acknowledge that a member of my family, Prof. Walter Dellinger, serves on that Commission.

47. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

RESPONSE: In distinguishing between the two, I would rely on legal definitions of the limits of speech protected by the First Amendment.

48. What fact-checking organization(s) should the United States government trust to accurately assess information?

RESPONSE: The United States government should carefully assess information that it relies on. The appropriate fact-checking organization will depend on the context and specific question at issue, and different components of the government may have differing views on which organizations to rely on and how heavily. As a general matter, it does appear that organizations such as the Government Accountability Office and Congressional Budget Office have enjoyed broad trust and support.

49. Do you believe that the average citizen is capable of serving as his or her own fact-checker without aid from social media or the media?

RESPONSE: I think it would depend on the type of information and the knowledge of the person.

50. According to the Customs and Border Protection, "[f]ederal officials have logged more than 1.1 million apprehensions at the U.S. Mexico border this fiscal year, after another busy month in June."

    a. Does that number—1.1 million—concern you from a security perspective?
    b. Given that the United States is now dealing with the Delta strain of the COVID-19 virus, shouldn't we be doing more to screen and/or vaccinate these individuals?

    RESPONSE: I do not have enough of a background in either immigration or infectious disease to answer this question.

51. Does the president have the power to remove senior officials at his pleasure?

    RESPONSE: Consistent with the law and decisions of the United States Supreme Court, my understanding is that a President can remove certain senior political officials at his or her pleasure, but I am not an expert in this part of Presidential power.

52. Is it possible that removing someone—as is the President's power—can be for wholly apolitical reasons?

    RESPONSE: I am not sure I have enough information to understand fully this hypothetical question, but it certainly seems reasonable to imagine that a President could remove certain officials for apolitical reasons.

53. Is climate change real?

    RESPONSE: I know of no reason to question the overwhelming consensus of experts that climate change is real.

54. What presents a greater threat to national security: domestic or international terrorism?

    RESPONSE: I believe both are serious threats.

55. Is the federal judicial system systemically racist? Please explain.

    a. If you answered yes, if confirmed, how will you feel comfortable working in a systemically racist system?

    RESPONSE: I know that there has been racism in America's past and I believe that past discrimination can have present effects including in our judicial system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

56. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?

RESPONSE: I do not know enough about the premise of the question to know if these are the only choices with respect to ensuring community safety during the pandemic.

57. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

RESPONSE: I believe federal judges must follow all applicable ethical and legal guidelines that govern their conduct.

58. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

RESPONSE: My view of the Second Amendment is guided by the *Heller* and *McDonald* decisions. In *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. I recognize that the individual Second Amendment right recognized in *Heller* was re-enforced by *McDonald*, and that these decisions should and must be followed by lower courts, as well as by local, state, and federal government officials. I also know the importance of firearms ownership to my family, friends, and fellow citizens. And I value greatly the firearms training I have had as part of my past work in law enforcement.

59. If confirmed, as the AAG for OLP, you will provide counsel to the Attorney General. Do you think that the regulations (28 CFR §§ 26.22, 26.23) guiding opt-in assessment by the Attorney General of capital counsel certifications under Chapter 154 of Title 28 allow for the Attorney General to reconsider a final certification decision? If so, what provision in the regulations allows for this?

RESPONSE: I am not familiar with the regulations referenced in the question, but I have tremendous confidence in the Attorney General to do only what is permissible by law.

60. What factors should the Justice Department consider in deciding whether or not to continue to defend the death sentences of Dzhokhar Tsarnaev and Dylann Roof on direct appeal?

RESPONSE: Within the Department of Justice, the decision whether to seek the death penalty is committed to the Attorney General, the Deputy Attorney General, Assistant Attorney General for the Criminal Division, and the U.S. Attorneys; it does not involve the Office of Legal Policy. I am aware that the Department of Justice has asked the Supreme Court to reverse the First Circuit's decision vacating Dzhokhar Tsarnaev's death sentence. I am also aware that the Department continues to defend the death sentence imposed on Dylann Roof.

61. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

RESPONSE: Investigation and prosecution decisions of the Department of Justice should be and are made independent of the White House. The Office of Legal Policy is not involved in case-specific decisions.

62. In your view, is a personal philosophical or religious objection to the death penalty on the part of Judge Garland a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

RESPONSE: Decisions at the Department of Justice under the leadership of the Attorney General are made based on the facts and the law. The Office of Legal Policy is not involved in case-specific decisions.

63. The Office of Legal Policy has already been tasked with coordinating Judge Garland's efforts to roll back the federal death penalty. Please explain how you see the role of OLP in that process working between the requirements of the laws and Constitution of the United States and the personal policy preferences of President Biden and Judge Garland on the death penalty.

RESPONSE: Attorney General Garland has tasked the Office of Legal Policy with certain death penalty-related reviews. I assume that work is ongoing. If confirmed, I will take the responsibility of coordinating those reviews very seriously, guided by the facts, and, above all, by fidelity to the Constitution and governing laws.

64. The Office of Legal Policy coordinates the Justice Department participation in the "capital counsel" certification program under AEDPA. Under Judge Garland's leadership, the Justice Department is already trying to roll back—likely against Justice Department regulations—Arizona's certification under this law. Please explain how you see the role of OLP in that process working between the requirements of the laws and Constitution of

the United States and Justice Department regulations on one hand, and the personal policy preferences of President Biden and Judge Garland on the death penalty on the other.

RESPONSE: The work of the Office of Legal Policy includes helping to formulate policy options that will comply with the law and the Constitution while also advancing the administration's goals.

65. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

RESPONSE: Yes. During my nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics officer to identify any potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

66. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

    a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?
    b. How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?

RESPONSE: My understanding is that the Supreme Court held in *Burwell v. Hobby Lobby Stores, Inc.* (2014), that a federal court reviewing a claim under the Religious Freedom Restoration Act bears the responsibility of determining whether a law creates a substantial burden on a party's free exercise rights. In doing so, the reviewing court must not second-guess the plausibility or reasonableness of the party's religious beliefs, but rather determine whether those asserted beliefs reflect an "honest conviction" and whether the law "imposes a substantial burden" on the party's ability to act in accordance with those "honest convictions." In that case, the Court held that complying with the law would require the parties' to "seriously violate their religious beliefs", and that not complying with the law would cause "substantial economic consequences", in holding that the burden was substantial.

67. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

RESPONSE: I believe in the important principle of religious liberty, enshrined in the Constitution and federal statutes like the Religious Freedom Restoration Act, which guarantee religious adherents and organizations substantial autonomy to act consistently with their beliefs.

68. Does illegal immigration impose costs on border communities?

RESPONSE: I lack sufficient facts to answer this question.

69. When was the last time you visited the U.S.-Mexico border?

RESPONSE: I have not visited the U.S. – Mexico border.

70. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

RESPONSE: I have not visited the U.S. – Mexico border.

71. Do you believe that immigrants who cross the border illegally should receive citizenship benefits before those who apply and follow the immigration and citizenship process as set forth by law?

RESPONSE: My understanding is that the Office of Legal Policy does not determine whether an immigrant, regardless of how they entered the country, should receive citizenship or related benefits. The U.S. Citizenship and Immigration Services within the Department of Homeland Security is the executive agency responsible for determining whether an immigrant qualifies for citizenship. Within the Department of Justice, the Executive Office of Immigration Review adjudicates immigration cases.

72. Do you believe that illegal immigrants attending state universities should receive in-state tuition benefits?

RESPONSE: I believe this question relates to an op-ed I wrote focusing on specific provisions in the North Carolina Constitution relating to education. These education provisions have been interpreted broadly by the state Supreme Court and without limitation to immigration status. I continue to believe that North Carolina should consider joining the many states who have addressed the issue of college tuition challenges facing undocumented high school graduates.

73. Do Blaine Amendments violate the Constitution?

RESPONSE: My understanding is that the Blaine Amendment was a proposal to amend the U.S. Constitution to prohibit states from aiding religious schools. In *Espinoza v. Montana Dep't of Revenue* (2020), the Supreme Court considered a provision of the Montana Constitution that prohibited any state aid to any school controlled by a "church, sect, or denomination." The Court held that the Montana Supreme Court's application of that no-aid provision to strike down a program to provide tuition assistance to parents who send their children to private schools violated the First Amendment.

74. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

RESPONSE: Yes. The Department should take credible allegations of voter fraud and other election abnormalities seriously.

75. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

    a. Do you agree with Attorney General Garland, DAG Lisa Monaco, and Associate AG Vanita Gupta that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

       RESPONSE: Yes.

    b. If so, does that mean you would allow a member of the Federalist Society to serve on the Criminal Division front-office staff?

       RESPONSE: Yes, I would allow a member of the Federalist Society to serve on the Office of Legal Policy front-office staff.

    c. Do you agree with Attorney General Garland, DAG Lisa Monaco, and Associate AG Vanita Gupta that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

       RESPONSE: Yes.

76. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

    RESPONSE: I have not been nominated to be a United States District judge. In April 2021, I was contacted by the White House Personnel Office to ask if I would like to be considered for the position of Assistant Attorney General for the Office of Legal Policy. Subsequently, I provided biographical materials to and answered questions posed by White House personnel officials. I also participated in an FBI background check (including an interview) and underwent the OGE financial disclosure and ethics process.

77. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

    RESPONSE: No.

a. Did anyone do so on your behalf?

RESPONSE: No.

78. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

RESPONSE: At some point during the Presidential transition, I recall informing one staff member with the American Constitution Society of my general interest in being considered for a legal position in the Administration but I do not believe I communicated about the Office of Legal Policy specifically.

a. Did anyone do so on your behalf?

RESPONSE: No.

79. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

RESPONSE: No.

a. Did anyone do so on your behalf?

RESPONSE: No.

80. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

RESPONSE: No.

a. Did anyone do so on your behalf?

RESPONSE: No.

81. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: My interview with White House personnel took place on Wednesday, April 21, 2021. I also provided biographical information using email. I communicated, by phone and email, with the DOJ ethics and financial disclosure attorney assigned to my potential nomination. The ethics and financial-related communications took place principally in May and June of 2021.

82. Please explain, with particularity, the process whereby you answered these questions.

RESPONSE: The Department of Justice received these questions on August 4, 2021. I worked with Department attorneys, conducted research with assistance, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on August 9, 2021.

Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
Hampton Y. Dellinger, Nominee to be Assistant Attorney General for Office of Legal Policy

1. While in law school you wrote that Justice Thomas's title, "Justice", is an oxymoron and an insult and that his decisions on the court are illegitimate. Do you still hold this view?

   RESPONSE: I wrote those comments approximately 30 years ago at a time of a contentious and momentous nomination and confirmation hearing. A lot of time has passed, and I recognize and respect his service on the Supreme Court of the United States.

2. In a 2008 letter to the *Wilson Daily Times* you wrote that you supported the constitutional guarantee of *Roe v. Wade* and that it is not an extreme decision. Could you explain your views on abortion and *Roe v. Wade*?

   RESPONSE: My understanding of reproductive rights is guided by the Supreme Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992), which held that a woman has the right to an abortion subject to restrictions that do not impose an undue burden on that right.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Hampton Yeats Dellinger, to be Assistant Attorney General for the Office of Legal Policy, Department of Justice

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

   RESPONSE: Prosecutors exercise discretion in prosecuting cases because they do not have unlimited resources, but the executive cannot refuse to enforce a law based on policy disagreements.

2. Do you personally own any firearms? If so, please list them.

   RESPONSE: My family possesses a few decades-old rifles that my wife inherited from her father at the time of his passing.

3. Have you ever personally owned any firearms?

   RESPONSE: My family possesses a few decades-old rifles that my wife inherited from her father at the time of his passing.

4. Have you ever used a firearm? If so, when and under what circumstances?

   RESPONSE: Yes. When serving in the North Carolina Department of Justice, I volunteered to undergo components of the Basic Law Enforcement Training (B.L.E.T.) required for frontline law enforcement officers in the state. The B.L.E.T. courses took place at the North Carolina Justice Academy in Salemburg, NC and included live and simulated firearms training. As I recall, pistols manufactured by Glock were used for the live training. As a teen, I engaged in some limited hunting activities. I also took riflery classes at YMCA camps.

5. Is the ability to own a firearm a personal civil right?

   RESPONSE: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court of the United States held that, "[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 595.

6. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

RESPONSE: No.

7. Is the criminal justice system systemically racist?

RESPONSE: I know that there has been racism in America's past and I believe that past discrimination can have present effects including in our criminal justice system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

8. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

RESPONSE: Those making political appointments likely consider a variety of elements when assessing qualified applicants so that public servants reflect the diversity of the people they will serve. All such considerations must be consistent with decisions of the U.S. Supreme Court and governing laws and regulations.

9. Is the federal court system infected with systemic racism?

RESPONSE: I know that there has been racism in America's past and I believe that past discrimination can have present effects including in our federal court system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

10. Can you give examples of this racism in the American court system?

RESPONSE: U.S. Supreme Court decisions from *Batson* (1986) to *Flowers v. Mississippi* (2019) have noted examples of racially disparate treatment in jury selection that appeared to be motivated by discriminatory intent.

11. Do there need to be any "updates" to uproot systemic racism in federal courts? If so, what are they?

RESPONSE: I believe all institutions should make continuous efforts to treat people fairly and without bias of any kind.

12. As a law student, you published an editorial in the Yale Daily News supporting *Roe v. Wade*, and even as you ran for Lt. Governor in 2008, you were outspoken about abortion rights. Where in the text of the Constitution is a guaranteed right to an abortion?.

RESPONSE: My legal understanding of reproductive rights is guided by the Supreme Court's interpretation of the Constitution in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Case*y, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

13. Can you name any limits that the states can put on abortion which you find unobjectionable?

RESPONSE: My legal understanding of that issue is guided by the Supreme Court's interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Case*y, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

14. You tweeted in May 18, 2019, "Yes, there are some women GOPers and a tiny # of Dems who want government not women to control women's bodies. But if there were no Republican men in elected office, there would be no abortion bans." Do you stand by this statement?

RESPONSE: My legal understanding of reproductive rights is guided by the Supreme Court's interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Case*y, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

Senator Josh Hawley
Questions for the Record

Hampton Dellinger
Nominee, Assistant Attorney General, Department of Justice, Office of Legal Policy

1. **In a tweet on May 18, 2019, you wrote, "Yes, there are some women GOPers and a tiny # of Dems who want government not women to control women's bodies. But if there were no Republican men in elected office, there would be no abortion bans."**
   a. **Do you believe that pro-life Americans are motivated by a desire to control women's bodies?**
   b. **The Supreme Court has recognized that the state has an interest in "protecting the potentiality of human life." *Roe v. Wade*, 410 U.S. 113. 162 (1973). Do you believe that this interest is legitimate?**

RESPONSE: My legal understanding of reproductive rights guided by the Supreme Court's interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

2. **In a tweet on May 15, 2019, you wrote that "calling Alabama legislators 'lawmakers' is an affront to the word 'law.' What's more lawless than criminalizing a constitutional and natural right."**
   a. **What did you mean by this statement?**
   b. **In your mind, what is the difference between a constitutional and a natural right?**
   c. **Do you believe that abortion is a natural right?**

   RESPONSE: Please see my response to Question 1.

3. **You wrote that you believed the presence of confederate monuments on state property creates a hostile environment in violation of the Civil Rights Act.**[1]

[1] Hampton Dellinger, *Delinger: Discarded UNC Plan Dooms Silent Sam Deal and Any Proposed Campus Return*, NC POLICY WATCH (Feb. 11, 2020); Hampton Dellinger, *If Silent Sam's Fall was Illegal, so too was its Standing*,

a. **Do you still hold to this position?**
b. **Explain what Supreme Court precedents you believe are applicable to cases involving monuments, and how they apply to confederate monuments in particular.**

RESPONSE: In 2017, at the request of Black students and faculty members at the University of North Carolina at Chapel Hill, I presented arguments to campus officials on the ways in which a towering Confederate monument in the middle of campus could create a racially-hostile educational environment that violated provisions of the Civil Rights Act of 1964. The arguments were summarized in later media reports and a short op-ed I authored. While I have not updated the research underlying the arguments made then, I am not aware of legal precedents that would undermine the position taken.

My more recent work on behalf of Black residents, clergy, business owners, and other taxpayers seeking to relocate Confederate monuments standing at the entrance of working courthouses has been based on provisions in the North Carolina Constitution, only some of which mirror guarantees in the federal constitution (and, even then, the North Carolina Supreme Court has interpreted state provisions differently from U.S. Supreme Court rulings on their federal right conterparts). So U.S. Supreme Court precedents may be instructive but are not controlling. That said, I am aware of the U.S. Supreme Court rulings in *Pleasant Grove City, Utah v. Summum* (2009) and *American Legion v. American Humanist Assn.* (2019). In *Summum*, both the opinion of the Court and Justice Stevens' concurrence recognized that there are constitutional restraints on government speech with the concurrence noting specifically that government speakers must obey the Equal Protection Clause. Justice Gorsuch's concurrence in *American Legion* references a Confederate flag but does so in the context of a point about federal standing jurisprudence which I believe is unrelated to a monument lawsuit brought pursuant to state law.

4. **You wrote an op-ed arguing that the University of North Carolina's practice of charging illegal residents of North Carolina out-of-state tuition was immoral and violated the Equal Protection Clause of the North Carolina Constitution.[2]**

RALEIGH NEWS & OBSERVER (Aug. 21, 2018); *Should All Confederate Statues be Taken Down?*, STATEN ISLAND ADVANCE (Aug. 24, 2018).

[2] Hampton Dellinger, *N.C. Constitution Argument to End UNC Tuition Discrimination*, WRAL (Oct. 29, 2020).

a. **Do you still hold to this position?**
b. **Do you believe that UNC's practice violated the federal Equal Protection Clause?**
c. **If so, explain the Supreme Court precedents that you believe are applicable to this case.** .

RESPONSE: While my op-ed did mention general equal protection, the focus was on specific provisions in the North Carolina Constitution relating to education. These education provisions have been interpreted broadly by the state Supreme Court and without limitation to immigration status. I continue to believe that North Carolina should consider joining the many states who have addressed the issue of college tuition challenges facing undocumented high school graduates.

I considered the issue only in accordance with provisions in the North Carolina Constitution.

Precedents of the U.S. Supreme Court were not applicable to my discussion of the North Carolina Constitution.

5. **Please provide a detailed summary of the process that led to your nomination. Include the following details in particular:**
   a. **Who first raised the possibility of your nomination?**
   b. **Have you spoken with any interest groups, such as Demand Justice, concerning your nomination?**
   c. **How many conversations did you have with White House staff leading up to your nomination?**

RESPONSE: I was approached in April 2021 by the White House Office of Presidential Personnel about being nominated to serve as Assistant Attorney General for the Office of Legal Policy. I participated in a vetting and screening process. In June 2021, I received a formal notification that the President would nominate me.

I did not speak with any interest groups about my nomination for this position. During the Presidential transition period, I did communicate with a staff member at the American Constitution Society about my general interest in being considered for a legal position in the Administration.

Questions for the Record for Hampton Y. Dellinger
From Senator Mazie K. 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?**

      RESPONSE: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      RESPONSE: No.

Senator Mike Lee
Questions for the Record
Hampton Dellinger, AAG, Office of Legal Policy

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

   RESPONSE: I fully recognize the importance of religious faith in American history and society today, as well as the faith protections enshrined in the First Amendment and laws such as the Religious Freedom Restoration Act (RFRA). Any potential legislative alteration to RFRA should be scrutinized to ensure that it does not compromise the essential original purpose of RFRA: protecting religious liberty. As for any possible executive action, it should be consistent with the Constitution and Congressional enactments.

2. As an Assistant Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

   RESPONSE: I do not expect such an occasion to arise, but if it did I would give my best advice that the law be followed and the best interests of the United States be considered. If my advice were not followed, I would resign.

3. As a nominee for a position in the Executive branch, do you think there are any limits on the President's use of prosecutorial discretion?

   RESPONSE: Prosecutors have always exercised discretion in prosecuting cases because they do not have unlimited resources, but the executive cannot refuse to enforce a law based on policy disagreements.

4. Please state for the record your thoughts on the Second Amendment.

   RESPONSE: My view of the Second Amendment is guided by the *Heller* and *McDonald* decisions. In *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." In *McDonald v. Chicago,* 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental individual right that applies to the states as well the federal government. I recognize that the individual Second Amendment right recognized in *Heller* was re-enforced by *McDonald*, and that these decisions should and must be followed by lower courts, as well as by local, state, and federal governments. I also know the importance of firearms ownership to my family, friends, and fellow citizens. And I value greatly the firearms training I

have had as part of my past work in law enforcement.

5. A number of states have enacted so-called "red flag laws" that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?

6. Do you support banning specific types of firearms?

7. Do you support banning large magazines?

8. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

REPONSE to Qs 5-8: The work of the Office of Legal Policy includes helping to formulate policy options that will comply with the law and the Constitution while also advancing the administration's goals. As noted in response to Question 4, any limitation on individual Second Amendment rights must be consistent with the decisions in *Heller* and *McDonald*.

9. Do you believe, if confirmed as an Assistant Attorney General, that you would have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the division under your care does not violate that code?

RESPONSE: If confirmed it would be my duty to act in accordance with the U.S. Constitution, U.S. law, and all ethical guidelines that Department of Justice attorneys are required follow.

10. Along the same lines, let's assume that someone acting as an agent of the Department of Justice under your control takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

RESPONSE: If confirmed, my expectation is that my colleagues will be acting in accordance with the U.S. Constitution, U.S. law, and all ethical guidelines that Department of Justice attorneys are required to follow. If I become aware that a particular individual is not doing so in a particular instance, I would act to ensure that any unlawful or improper conduct is addressed.

11. Will you commit that the Office of Legal Policy of the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?

RESPONSE: I am not aware of the specific allegations referenced but I can say as a general matter that, if confirmed, I would look first to experts within the Justice Department for any necessary data or information. After that, I would rely on trusted sources for accurate and unbiased data and information.

12. There's been a lot of rhetoric over the last year from critics of our criminal justice system suggesting that we should "defund" the police. Do you agree with those critics?

RESPONSE: I do not believe we should defund the police. I believe we need more resources allocated to public safety.

13. Do you believe our federal criminal justice system requires reforms, and if so, what reforms?

RESPONSE: If I am confirmed, I will consider any proposals to reform our criminal justice system based on the facts and the law.

14. For purposes of federal law, when does life begin?

RESPONSE: My understanding is that the U.S. Supreme Court has declined to answer the question and I am not aware of a uniform definition in federal law.

15. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

RESPONSE: Please see my response to Q 14.

16. At what point in human development does the United States have a compelling interest in protecting a human life?

RESPONSE: In *Planned Parenthood of Se. Pennsylvania v. Casey,* 505 U.S. 833 (1992), the U.S. Supreme Court held that states may regulate abortion prior to viability based on the state's interest in maternal health and potential life, provided those regulations did not impose and do not have "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."

17. Do you support laws penalizing fetal homicide?

18. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

19. Given that "homicide" requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

20. Are there any circumstances which justify the killing of an innocent human being?

21. Do you support the Born Alive Infants Protection Act?

22. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

RESPONSE TO Qs 17-22: The work of the Office of Legal Policy includes helping to formulate policy options at the direction of the Attorney General that will comply with the law and the Constitution while also advancing the administration's goals.

23. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty orinequality." Do you agree with that definition?

RESPONSE: Yes.

24. What is the difference between "equity" and "equality?"

RESPONSE: I agree with the definition of equity that you detailed in Q 23. Equality is treating everyone the same.

25. In order to achieve "equity," is it ever necessary to discriminate *against* members of some groups in favor of others?

RESPONSE: As the Attorney General has said, "equity requires accounting for the fact that not everyone starts from the same footing and works to address more longstanding barriers."

26. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

RESPONSE: Please see my response to Q25.

27. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: "[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process." Do you plan to institute "anti-racist" policies in the Office of Legal Counsel at the Justice Department? If so, which policies do you plan to institute?

RESPONSE: All policies I would institute if confirmed to be Assistant Attorney General for the Office of Legal Policy would be consistent with the law and any guidance or instruction from the Attorney General.

28. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

RESPONSE: Sentencing decisions should be made by judges according to the law.

29. The Biden Administration has explicitly adopted a policy of "addressing systemic racism." White House, "Statement by President Biden on the International Day for the Elimination of Racial Discrimination, March 21, 2021. Given that part of your responsibilities, should you be confirmed, will be carrying out this policy goal, please explain how you define "systemic racism."

RESPONSE: I know that there has been racism and discriminatory policies in America's past and I believe that disparate treatment can have present effects. An example of systemic racism would be the decades-long practice of "red lining" maps to establish areas in which houses could not be sold to (or adequately insured if sold to) African-Americans or religious minorities. Realtors would perhaps not be personally biased themselves, but the system of redlining had a racially discriminatory and systemic effect. And the undercutting of generational wealth transfer through home ownership has had long term ramifications.

30. Do you think that speech alone—without a threat or accompanying action—should be prosecuted?

RESPONSE: No.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?

   RESPONSE: No.

2. Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?

   RESPONSE: No.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Patricia Tolliver Giles
Nominee to be United States District Judge for the Eastern District of Virginia

1. **Please share what has prepared you to handle cases that arise under the U.S. Constitution. And if you faced a constitutional issue, what is the general procedure you would follow for determining what the law required?**

   Response: For the past eighteen years, I have served as a federal prosecutor. I regularly responded to motions where defendants raised constitutional arguments. Prior to that, I was both a civil litigator and a law clerk in the United States District Court for the Eastern District of Virginia. Over the span of my career, I have often been confronted with either new and/or complex issues. My approach was always the same: I would research the issue and identify Supreme Court and Fourth Circuit precedent (or, while in civil practice, whatever circuit or state court that was binding), and then I would carefully apply that precedent to the facts of my case. If I am confirmed to be a United States District Court judge, I will do the same. For cases that arise under the Constitution, I will begin my analysis with the text of the Constitution and faithfully apply all Supreme Court and Fourth Circuit precedent to the case or issue before me.

2. **When government actions curtail individual rights, the relevant standard of review can make a tremendous difference in the outcome of litigation. I am referring to standards of review such as strict scrutiny—not to standards of review such as de novo review. I would appreciate understanding your thoughts on several related questions.**

   a. **Please explain the contours of the strict-scrutiny legal standard and when it applies, with relevant case law discussing the standard.**

      Response: Strict scrutiny is the standard of review that applies to claims brought under the Equal Protection Clause or the Due Process Clause when those claims involve certain fundamental rights or a suspect classification. Strict scrutiny is the most rigorous standard of review. Under strict scrutiny, the government action must further a compelling government interest and be the least restrictive means of furthering that interest. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). The Supreme Court has identified race, religion, national origin, and alienage as suspect classes. *Johnson v. Robison,* 415 U.S. 361, 374 n. 14 (1974) (noting that traditional indicia of suspectedness include classifications based on "immutable characteristic determined solely by the accident of birth" or classes of persons "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."). In terms of fundamental rights, the Supreme Court has applied strict scrutiny in reviewing challenges to content-based restrictions on free speech, *Reed v. Town of*

Gilbert, Arizona, 576 U.S. 155 (2015), and laws that burden the free exercise of religion and are not neutral and generally applied, treating comparable secular activities more favorably. *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246 (2020).

b. Strict scrutiny is widely viewed as favorable for individuals asserting their constitutional or civil rights, regardless of the facts—while rational basis is widely viewed as an easier standard for the government, regardless of the facts. When federal courts apply intermediate scrutiny, does the standard itself tend to favor either individuals or the government? Please explain using relevant case law.

Response: The Supreme Court has applied intermediate scrutiny when the challenged law or government action involves a quasi-suspect class, such as gender. *Craig v. Boren*, 429 U.S. 190 (1976). The Supreme Court has also applied intermediate scrutiny for content-neutral speech regulations. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). Under intermediate scrutiny, the law or regulation at issue must be substantially related to an important government interest. I do not have an opinion as to whether the intermediate scrutiny test generally favors either individuals or the government. If confirmed and the case came before me that required me to apply intermediate scrutiny, I would do so based on a careful evaluation of the record before me, without a "thumb on the scale" for either party.

c. Many circuit courts apply "heightened rational basis review," a phrase that draws in part from the Supreme Court's opinion in *Plyler v. Doe*, 457 U.S. 202, 238 (1982). Under this heightened review, "[r]ather than relying upon the various post-hoc rationalizations that *could* conceivably have justified the laws, the Court focused on the motivations that *actually* lay behind the laws." *Bishop v. Smith*, 760 F.3d 1070, 1099 (10th Cir. 2014) (Holmes, J., concurring) (emphases in original). How would you define (1) ordinary rational-basis review and (2) heightened rational-basis review?

Response: When applying rational basis review, the court must determine whether the challenged law or action is rationally related to a legitimate government interest. *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949). In *Plyler v. Doe*, the Supreme Court held that a Texas statute that withheld from local school districts state funds for school children who were not legally admitted to the United States was unconstitutional. In so doing, the Court stated that the Texas statute could not be considered rational unless it furthered some substantial goal of the state. 457 U.S. 202 (1982).

d. Assuming that you were choosing between ordinary and heightened rational basis, how would you decide which to apply?

Response: If I am confirmed, I will apply all Supreme Court and Fourth Circuit precedent to the facts before me.

3. In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?

Response: To my knowledge, neither the Supreme Court nor the Fourth Circuit have used the term "super precedent." If I am confirmed, I will faithfully follow all binding Supreme Court and Fourth Circuit precedent.

4. One of the federal courts' important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.

a. How would you determine whether statutory or regulatory text was ambiguous?

Response: When interpreting a statute or regulation, I would start with the plain text of the statute or regulation. Whether the text is ambiguous "is determined [not only] by reference to the language itself, [but as well by] the specific context in which the language is used, and the broader context of the statute as a whole." *Yates v. United States*, 574 U.S. 528, 537 (2015); *see also Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (addressing question of ambiguity in a regulation).

b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?

Response: No, both require the court to determine whether the language has more than one reasonable interpretation. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2411 (2019); *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 637 F.3d 280, 284 (4th Cir. 2011).

c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?

Response: If the text was ambiguous, I would look to canons of statutory construction as well as Supreme Court and Fourth Circuit precedent interpreting the federal statute or regulation at issue. If there was no precedent, I would consider non-binding authority from other courts that have interpreted the particular statute or regulation. If the meaning remained unclear after exhausting all options, I could consult legislative history.

d. **When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?**

Response: If there were two competing and contradictory canons of statutory interpretation, I would research and determine whether the Supreme Court or Fourth Circuit provided any guidance on weighing the canons at issue.

5. **What is more important for a district judge: (a) reaching what he thinks is the correct conclusion or (b) reaching a conclusion that he knows will not be overturned on appeal? How would you decide whether to go with option (a) or (b)?**

Response: A district judge should be concerned with faithfully following the law and applying it to the case or issue before the court. If confirmed as a district judge, I would apply all Supreme Court and Fourth Circuit precedent. If there is precedent, then the district court would necessarily reach "the correct conclusion" and the ruling will not be overturned on appeal. If there is no binding precedent, a district judge should still faithfully follow and apply the law.

6. **In *McGowan v. Maryland*, 366 U.S. 420, 442 (1961), the Supreme Court wrote that "the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." Do you agree that secular actions with some religious overlap can be constitutional?**

Response: As noted in the quote above, the Supreme Court has recognized that the Establishment Clause does not prohibit some overlap between government action and the tenets of some or all religions. As a judicial nominee, it would not be appropriate for me to offer my personal views. If confirmed as a district judge, I will follow all Supreme Court and Fourth Circuit precedent.

7. **Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: In *Bostock*, the Supreme Court noted that it was "deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." 140 S. Ct. 1731, 1754 (2020). The Supreme Court has interpreted the Free Exercise and Establishment clauses in a number of cases. As a judicial nominee, it would not be appropriate for me to offer my personal views on the Supreme Court's statement. If confirmed, I will follow Supreme Court precedent.

8. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, the Supreme Court held that the ministerial exception, which is grounded in the First Amendment, barred two teachers' employment discrimination claims against two religious elementary schools. 140 S. Ct. 2049 (2020). In doing so, the Supreme Court did not restrict the ministerial exception to employee's that held the title of "minister," but stated that applying the exception would depend on what the employee does. *Id.* at 2063-64. As a judicial nominee, it would not be appropriate for me to offer my personal views on the Supreme Court's decision. If confirmed, I would follow Supreme Court and Fourth Circuit precedent.

9. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. What level of scrutiny applies to a Second Amendment challenge in the Fourth Circuit?

Response: In *Heller,* the Supreme Court did not address which level of scrutiny should apply in reviewing Second Amendment challenges. The Fourth Circuit has adopted an analysis similar to the approach to challenges arising under the First Amendment. *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011). The level of scrutiny applied depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right. *Id.* The Fourth Circuit considers "the nature of a person's Second Amendment interest, the extent to which those interest are burdened by government regulation, and the strength of the government's justifications for the regulation." *Id.* The Fourth Circuit has applied intermediate scrutiny to Second Amendment challenges after finding that the claims were not within the core right identified by *Heller*. *See Masciandaro*, 638 F.3d at 471 (finding a lesser showing was necessary with respect to laws that burden the right to keep firearms outside the home); *United States v. Chester*, 628 F.3d 673, 682-83 (4th Cir. 2010) (applying intermediate scrutiny when the Second Amendment challenge was to a statute that prohibited possession of a firearm by an individual convicted of a misdemeanor crime of domestic violence).

10. After many years of relative quiet, Second Amendment jurisprudence developed into a substantially larger body of law over the past decade. I would appreciate understanding your thoughts on several related questions.

a. According to the Supreme Court, what are the permissible limits on an individual's right to keep and bear arms?

Response: In *District of Columbia v. Heller*, the Supreme Court recognized that there were limitations on an individual's right to keep and bear arms, including "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).

b. Do the Supreme Court's precedents leave room for other constitutionally permissible limits—on an individual's right to keep and bear arms—that the Supreme Court has not already specified?

Response: In *Heller*, the Supreme Court noted that the list of limitations was not exhaustive. 554 U.S. 570, 627 n. 26 (2008).

c. Is the Second Amendment individual right to "keep" arms at all different from the right to "bear" arms?

Response: The Second Amendment confers an "individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In *Heller*, the Supreme Court concluded that phrase guaranteed "the individual right to possess and carry weapons in case of confrontation." *Id.* at 592.

11. When it comes to drug laws, federal and state laws are not always the same. As a federal judge, would you apply the Controlled Substances Act as it is written—even if a state law was more permissive than the federal law?

Response: Yes.

12. What is implicit bias?

Response: "Implicit bias" may mean different things to different people. I would define "implicit bias" as the subconscious bias that all human beings have.

13. Do you have any implicit biases? If so, what are they?

Response: Because I define "implicit bias" as the subconscious bias that all human beings have, I am sure that I have some implicit biases as well but, by definition, they would be subconscious. While serving as an Assistant United States Attorney, I have always ensured that I treated defendants fairly at every stage of the case (investigation,

charging, trial, sentencing). I questioned the basis of my decisions and made sure they were based on specific facts and that bias played no part in the decision. If I am confirmed as a district judge, I will do the same.

14. Please explain, with detail, the process by which you became a district-court nominee.

Response: On September 27, 2017, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. On October 24, 2017, I interviewed with the Senators' independent panel of attorneys. On November 2, 2017, I interviewed with Senator Kaine. On November 14, 2017, I interviewed with Senator Warner. On December 21, 2017, Senator Warner advised me that he and Senator Kaine would be referring my name to former President Trump for consideration. On January 4, 2018, I interviewed with attorneys from the White House Counsel's Office.

On May 17, 2018, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. I was advised that Senators Warner and Kaine referred my name to former President Trump for consideration.

On December 15, 2021, I submitted applications to Senators Warner and Kaine for consideration for the position of United States District Judge. On March 18, 2021, I interviewed with Senators Warner and Kaine's independent panel of attorneys. On April 7, 2021, I was advised that I was selected to have a second-round interview with Senator Warner and Senator Kaine. On April 17, 2021, a representative of Senator Warner's office contacted me and said that since Senators Warner and Kaine had interviewed me previously when I applied for a judicial vacancy, they did not need to re-interview me. On April 26, 2021, I received a call from Senator Kaine advising that Senators Warner and Kaine were recommending me to President Biden.

On April 29, 2021, I was contacted by the White House Counsel's Office to schedule an interview. On April 30, 2021, I interviewed with attorneys from the White House Counsel's Office. Since May 3, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me. On July 13, 2021, President Biden nominated me.

15. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: No.

16. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: No.

17. Please explain with particularity the process by which you answered these questions.

Response: I reviewed the questions, conducted research as needed, and then drafted responses. I provided draft responses to the Department of Justice's Office of Legal Policy. After receiving feedback, I revised and finalized my responses.

18. Do the answers in this document reflect your true and personal views?

Response: Yes.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Patricia Tolliver Giles, to be United States DistrictJudge for the Eastern District of Virginia

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previousnominee declined to provide any response to discrete subparts of previous questions,they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previouslyprovided.

If a question asks for a yes or no answer, please provide a yes or no answer first andthen provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-writtenand then articulate both the premise about which you disagree and the basis for thatdisagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentativeanswer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, pleasestate the ambiguity you perceive in the question, and provide multiple answers whicharticulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is the ability to own a firearm a personal civil right?

Response: Yes. In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers an "individual right to keep and bear arms." 554 U.S. 570, 595 (2008). The Supreme Court later held the Second Amendment was a fundamental right that was incorporated under the Fourteenth Amendment's Due Process Clause. *McDonald v. Chicago*, 561 U.S. 742, 791 (2010).

2. Does the right to own a firearm receive less protection than the other individualrights specifically enumerated in the Constitution?

Response: In *District of Columbia v. Heller*, the Supreme Court drew a comparison between the Second Amendment's right to keep and bear arms and the First Amendment's right of free speech. 554 U.S. 570, 595 (2008). In doing so, the Supreme Court noted that the right to keep and bear arms was not unlimited just as the right of free speech was not unlimited. To my knowledge, the Supreme Court and the Fourth Circuit have not held that the Second Amendment right receives less protection than the other individual rights specifically enumerated in the Constitution.

3. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: Please see my response to Question 2.

Questions for the Record for Patricia Tolliver Giles
From Senator Mazie K. 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?

   Response: No.

   b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

   Response: No.

Senator Mike Lee Questions
for the Record Patricia Giles,
E.D. Va.

1. How would you describe your judicial philosophy?

Response: I have never served as a judge. My experience as a civil and criminal litigator, however, has informed my view of what the role of a judge should be. A judge should approach every case in a fair and impartial manner, and only decide the discrete issue or case before her based on the law. A judge must never allow personal opinions or beliefs to impact decision-making, or approach the case with the end result already in mind. The judge should also treat the parties with dignity and respect, and explain the court's ruling.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: I would start with the plain text of the federal statute. If the statute was clear and unambiguous, my interpretation process would stop there. If the text was ambiguous, I would look to canons of statutory construction and Supreme Court and Fourth Circuit precedent interpreting the federal statute at issue. If there was no precedent, I could consider non-binding authority from other courts that have interpreted the particular statute. If the meaning remained unclear after exhausting all options, I could consult legislative history.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would start with the plain text of the constitutional provision. I would follow binding Supreme Court and Fourth Circuit precedent interpreting the constitutional provision.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: The Supreme Court has held that when interpreting constitutional provisions, it is appropriate to start with the text of the Constitution. In some cases, the Supreme Court has interpreted the constitutional provisions based on the original public meaning. *District of Columbia v. Heller*, 554 U.S. 570 (2008). On other occasions, the Supreme Court has not. If confirmed, I would follow Supreme Court and Fourth Circuit precedent about the role of the text and original meaning of a constitutional provision when interpreting the Constitution.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: Please see my response to Question No. 2.

a. **Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: "Plain meaning" refers to the public understanding of the relevant language at the time of enactment.

6. What are the constitutional requirements for standing?

Response: The constitutional requirements for standing are that: 1) the plaintiff suffered an injury that is "concrete and particularized" and "actual and imminent," not "conjectural and hypothetical"; 2) that there is a causal connection between that injury and the conduct complained of; and 3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotations omitted).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: In *McCulloch v. Maryland*, the Supreme Court recognized that Congress has implied powers under the Necessary and Proper Clause to carry out the enumerated powers in the Constitution. 17 U.S. 316 (1819).

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would research and apply Supreme Court and Fourth Circuit precedent to evaluate whether or not it was a valid exercise of Congress's authority to carry out one of Congress's implied or enumerated powers in the Constitution.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held that the Due Process Clauses of the Fifth and Fourteenth Amendments protect non-enumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997) (internal quotations omitted). Those rights include the right to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; to bodily integrity; and to an abortion. *Id.* at 720 (collecting and citing cases).

10. What rights are protected under substantive due process?

Response: The Due Process Clauses of the Fifth and Fourteenth Amendments protect fundamental rights.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: The Supreme Court has held that due process protects some personal rights. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997) (internal quotations omitted). The Supreme Court precedents with respect to economic rights are very different. *See, e.g., West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937). If confirmed, I will follow Supreme Court precedent and personal beliefs will not impact my decision-making.

12. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has held that the Commerce Clause authorizes Congress to regulate three categories of activity: 1) "the use of the channels of interstate commerce"; 2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and 3) "those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has identified race, national origin, alienage, and religion as suspect classes. *Johnson v. Robison*, 415 U.S. 361, 374 n. 14 (1974) (noting that traditional indicia of suspectedness include classifications based on "immutable characteristic determined solely by the accident of birth" or classes of persons "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. . ..").

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The separation of powers and checks and balances are vital to our Constitutional structure. They prevent power from being concentrated in any one branch of government or any individual. Concentrations of power could lead to potential abuse of that power.

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: If deciding a case in which one branch assumed an authority not granted it by the text of the Constitution, I would research and apply Supreme Court and Fourth Circuit precedent addressing the proper scope of authority and other alleged unauthorized exercises of authority.

16. What role should empathy play in a judge's consideration of a case?

Response: Empathy should not play a role in the judge's consideration and decision-making in a case. A judge should carefully listen to the litigants' positions and always treat them with dignity and respect. A judge's decisions must be based on impartially applying the law to the facts before him or her.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Invalidating a law that is constitutional and upholding a law that is unconstitutional are both improper.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I do not have an opinion on the Supreme Court's exercise of its power of judicial review to strike down federal statutes.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review refers to the judicial branch's authority to review actions of other branches of government to determine whether such actions are constitutional. Judicial supremacy describes the Supreme Court's role as the final interpreter of the meaning of the Constitution.

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials have an independent obligation to follow the Constitution and a legal obligation to respect duly rendered judicial decisions. As a judicial nominee, it would not be appropriate to offer an opinion as to how an elected official should handle the situation were these duties to conflict.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: The judicial branch has limited authority. Courts should not enact laws like Congress or enforce laws as the executive branch. The role of the judge is to fairly and impartially decide the discrete issue or case before the court and never permit outside influences to impact the court's decision-making or consideration of a case.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extendthe precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: A lower court must always follow precedent.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: In sentencing an individual defendant, the defendant's group identities regarding race, gender, nationality, sexual orientation or gender identity should not play a role in the judge's sentencing analysis. Section 5H1.10 of the U.S. Sentencing Guidelines specifically states that race, sex, national origin, creed, religion, and socio-economic status are not relevant factors in determining a sentence. Moreover, these group identities are not included as permissible considerations under the sentencing factors specified in 18 U.S.C. § 3553(a).

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including

individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in ruralareas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you defineequity?

Response: I do not have an opinion regarding the Biden Administration's definition of equity.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: I am not an expert on the terms "equity" and "equality" and appreciate that the terms may mean different things to different people. To some, I understand that "equality" means the distribution of resources evenly and "equity" means the distribution of resources based on circumstances to ensure individuals have an equal outcome.

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: In interpreting the 14th Amendment's Equal Protection Clause, I would look to the text of the constitutional provision and Supreme Court and Fourth Circuit precedent. The text of the 14th Amendment states in part that "[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

27. How do you define "systemic racism?"

Response: I understand that "systemic racism" may be defined differently by different people. I am aware that some have defined "systemic racism" as patterns, practices, and policies of discrimination and disparate treatment impacting communities of color as opposed to discrete acts of racism by individual actors.

28. How do you define "critical race theory?"

Response: I understand that "critical race theory" means different things to different people. In the context of law school, I am aware that critical race theory is an area of scholarship that looks at the intersection of race and the law.

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: Please see my responses to Questions 27 and 28.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

   Response: I have never served as a judge. My experience as a civil and criminal litigator, however, has informed my view of what the role of a judge should be. A judge should approach every case in a fair and impartial manner, and only decide the discrete issue or case before her based on the law. A judge must never allow personal opinions or beliefs to impact decision-making, or approach the case with the end result already in mind. The judge should also treat the parties with dignity and respect, and explain the court's ruling.

2. **Would you describe yourself as an originalist?**

   Response: I have not used any terms to describe myself. The extent of my judicial philosophy is contained in my response to Question 1.

3. **Would you describe yourself as a textualist?**

   Response: I have not used any terms to describe myself. The extent of my judicial philosophy is contained in my response to Question 1.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I have not used the term "living" to describe the Constitution. I view the Constitution as an enduring document.

5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I have a deep respect for all Supreme Court Justices based on their intellect, service to the nation, and the fact that they reflect the penultimate of the legal profession. If I had to select Justices whom I admired the most it would be Thurgood Marshall and Sandra Day O'Connor. This admiration is not based on their jurisprudence but my respect for them personally. I admire Justice Marshall for his advocacy in *Brown v. Board* and for being the first African-American on the Supreme Court. I admire Justice O'Connor for being the first woman on the Supreme Court. Their accomplishments were groundbreaking and inspired me in my own legal career.

6. Was Marbury v. Madison correctly decided?

Response: As a judicial nominee, it would not be appropriate for me to opine on the merits of Supreme Court decisions. Prior judicial nominees have made an exception for *Marbury v. Madison* as it established judicial review and it is unlikely that issue would ever come before a court again. I agree.

7. Was Lochner v. New York correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all binding precedent.

8. Was Brown v. Board of Education correctly decided?

Response: As a judicial nominee, it would not be appropriate for me to opine on the merits of Supreme Court decisions. Prior judicial nominees have made an exception for *Brown v. Board* as it is unlikely that the issue of *dejure* segregation would ever come before a court again. I agree.

9. Was Bolling v. Sharpe correctly decided?

Response: As a judicial nominee, it would not be appropriate for me to opine on the merits of Supreme Court decisions. Prior judicial nominees have made an exception for *Brown v. Board* as it is unlikely that the issue of *dejure* segregation would ever come before a court again. I agree, and *Bolling v. Sharpe* is in that same vein.

10. Was Cooper v. Aaron correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

11. Was Mapp v. Ohio correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

12. Was Gideon v. Wainwright correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

13. Was Griswold v. Connecticut correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

14. Was South Carolina v. Katzenbach correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

15. Was Miranda v. Arizona correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

16. Was Katzenbach v. Morgan correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

17. Was Loving v. Virginia correctly decided?

Response: As a judicial nominee, it would not be appropriate for me to opine on the merits of Supreme Court decisions. Prior judicial nominees have made an exception for *Loving v. Virginia* as it struck down miscegenation laws and it is unlikely that the issue would ever come before a court again. I agree.

18. Was Katz v. United States correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States

Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

19. Was Roe v. Wade correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

20. Was Romer v. Evans correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

21. Was United States v. Virginia correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

22. Was Bush v. Gore correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

23. Was District of Columbia v. Heller correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

24. Was Crawford v. Marion County Election Bord correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

25. Was Boumediene v. Bush correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

27. Was Shelby County v. Holder correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

28. Was United States v. Windsor correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

29. Was Obergefell v. Hodges correctly decided?

Response: As a judicial nominee, I am bound by the Code of Conduct of United States Judges and it would not be appropriate for me to opine on the merits of Supreme Court decisions. I will faithfully apply all precedent.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: In the Fourth Circuit, only the *en banc* court, not a subsequent panel, has the authority to overturn a previous panel's published opinion. *United States v. Guglielmi*, 819 F.2d 451, 457 (4th Cir. 1987); *McMellon v. United States*, 387 F.3d. 329, 332 (4th Cir. 2004). Rule 35 of the Federal Rules of Appellate Procedure provides that an *en banc* hearing will only be ordered when it is "necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a).

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: In the Fourth Circuit, only the *en banc* court, not a subsequent panel, has the authority to overturn a previous panel's published opinion. *United States v. Guglielmi*, 819 F.2d 451, 457 (4th Cir. 1987); *McMellon v. United States*, 387 F.3d. 329, 332 (4th Cir. 2004). Rule 35 of the Federal Rules of Appellate Procedure provides that an *en banc* hearing will only be ordered when it is "necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance."

Fed. R. App. P. 35(a).

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: A defendant's race or ethnicity should never be considered as a factor during sentencing.

Questions from Senator Thom Tillis
for Patricia Tolliver Giles
Nominee to be United States District Judge for the Eastern District of Virginia

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I define judicial activism as when a judge allows his or her personal views or beliefs to impact his or her decision-making, or when a judge approaches a case with the end result in mind then attempts to reverse engineer the court's rationale. Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation for a judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: Judges are not members of the legislative branch. Congress and state legislative bodies are best suited to make policy decisions.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Judges are required to faithfully apply the law without consideration of whether or not an outcome is desirable.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: Judges should not interject his or her own politics or policy preferences when interpreting and applying the law. Judges must faithfully interpret and apply the law without consideration of personal views or beliefs.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed, I will faithfully follow all Supreme Court and Fourth Circuit precedent. The Supreme Court has held under *Heller* and *McDonald* that the Second Amendment confers an individual right to keep and bear arms.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: I would apply all Supreme Court and Fourth Circuit precedent analyzing challenges to government action based on the Second Amendment. As a judicial nominee, I am bound by the Code of Conduct for United States Judges and it would not be appropriate for me to opine on a matter that could potentially come before me if I were confirmed.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: If confirmed, I would apply Supreme Court and Fourth Circuit precedent on qualified immunity. Under the law, the court must first determine whether there is a violation of a clearly established constitutional or statutory right. If there is, the court must then determine whether a reasonable official would have known that the defendant's conduct violated that right. *Saucier v. Katz*, 533 U.S. 194, 200-02 (2001).

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a judicial nominee, it would not be appropriate for me to comment on whether the Supreme Court's qualified immunity jurisprudence is sufficient protection for law enforcement. If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedent. Even if I had a personal opinion, I would not allow any personal opinions to impact my decision-making in a case.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my response to Question 10.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: As a judicial nominee, it would not be appropriate for me to comment on the Supreme Court's patent eligibility jurisprudence. If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedent. Even if I had a personal opinion, I would not allow any personal opinions to impact my decision-making in a case.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. ***ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: As an Assistant United States Attorney for the last 18 years, a law firm associate practicing exclusively civil litigation for over two years before that, and as a federal district court law clerk for two years, I have frequently had to quickly and thoroughly research new areas of the law, which is what I would look forward to doing if a case involving patent law came before me. As a judicial nominee, I must decline to analyze factual hypotheticals as it could suggest how I would decide a case if I were confirmed and the matter came before me. I am of aware of Supreme Court decisions, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014), where the Supreme Court has given guidance about standards for patent eligibility. If confirmed, I would carefully review the patent before me and the underlying facts in the record, and carefully apply all Supreme Court and Fourth Circuit precedent to the facts of the case.

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: Please see my response to Question 13(a).

c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Please see my response to Question 13(a).

d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should

***BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question 13(a).

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13(a).

f. **A business methods company,** ***FinancialServices Troll,*** **specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13(a).

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should** ***BioTechCo*** **be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if** ***BioTech Co*** **invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see my response to Question 13(a).

h. **Assuming** ***BioTechCo's*** **diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question 13(a).

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question 13(a).

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13(a).

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a judicial nominee, it would not be appropriate for me to comment on the Supreme Court's patent eligibility jurisprudence. If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedent. Even if I had a personal opinion, I would not allow any personal opinions to impact my decision-making in a case.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Toby Heytens
Nominee to the Court of Appeals for the Fourth Circuit
August 4, 2021

1. **You have practiced before numerous courts, including the Supreme Court of the United States, the Fourth Circuit, and state appellate courts in Virginia and Maryland. You have clerked for a judge on the Third Circuit and for Justice Ruth Bader Ginsburg. And as an academic, you have written about how appellate courts interact with trial courts. Through all that I am assuming you have developed a perspective on what qualities good federal judges bring to the bench.**

    a. **Can you tell us about your views on the qualities a judge needs to excel on the bench?**

    Response: I believe that two of the most important qualities a judge needs to excel on the bench are: (a) the ability to maintain (and convey) an open mind; and (b) a willingness to engage in hard work. For appellate judges, I would additionally note that collegiality and a willingness to work collaboratively with other judges to resolve cases is deeply important and a quality I saw modeled by both Judge Becker and Justice Ginsburg.

    b. **Looking back on your experience appearing before judges and analyzing the structure of judicial decisionmaking in your academic writings, can you provide a few examples of things judges have done that you thought indicated the right temperament or the right approach?**

    Response: Temperament is critically important to being a good judge. Although most judges will hear a great many cases over their career, each one of those cases may be the only contact that the parties, witnesses, jurors, or spectators have with the judicial system. For that reason, it is essential for judges to treat the parties, witnesses, jurors, and spectators with respect and in a manner befitting the importance of the work being done. I also admire the Fourth Circuit's tradition of having the judges come down off the bench to greet counsel after each oral argument because it is tangible way of conveying respect for the critical role that lawyers play in our adversarial system.

2. **The Committee has received a number of letters of support from conservatives who have worked and clerked with you.**

    For instance, former Solicitors General Paul Clement, Gregory Garre, and Theodore Olson—all appointed by President George W. Bush—signed a letter stating: "The signatories to this letter include members of both parties with a wide variety of jurisprudential views. But our professional experience with Mr. Heytens leaves each of

us confident that he is highly qualified to serve on the Fourth Circuit and will be an excellent appellate judge."

The Committee also received a letter signed by 26 Supreme Court law clerks who clerked alongside you during the October 2002 Term. The 26 signatories included clerks to Chief Justice Rehnquist and Justices Scalia and Thomas, among others.

Can you describe for us the importance you place on working with colleagues who may have different views or who may approach an issue differently than you do?

Response: At all stages of my career, I have benefited tremendously from working with and learning from colleagues whose views or approach may differ from my own. Many times, we have been able to find at least some common ground. And, even when not, I have found that my own thinking benefits greatly from understanding other perspectives and grappling seriously with the strongest arguments for and against any particular legal position.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Toby Heytens
Nominee to be United States Circuit Judge for the Fourth Circuit Court of Appeals

1. **In 2015, you spoke at the University of Virginia Law School's student chapter of the Federalist Society about the cult of personality surrounding the Supreme Court. You noted that many Supreme Court picks did not have trial judge experience and did not serve as circuit judges for a significant amount of time. You also claimed, I think jokingly, that the D.C. Circuit was "not a real court." Which Justices were you referring to?**

   Response: The event in question was a panel discussion of an article written by Professors Craig S. Lerner and Nelson Lund entitled "Judicial Duty and the Supreme Court's Cult of Celebrity," which examined what the authors called "the rise of … the celebrity justice" and proposed various reforms. Professor Lund was present and my role was that of a commentator on the article and on his remarks. Although I do not recall which specific Justices I may have had in mind at the time, I believe that Justice Sotomayor was the only member of the then-current Supreme Court who had ever served as a trial judge.

2. **In Spring 2020, you wrote an article titled "Two Centuries of Virginia in the Supreme Court." In this article, one of the sections was labeled "The Wrong Side of History." Many of the cases and issues in this section are ones that you and I would probably agree are "wrong." I want to know what you meant by that.**

   a. **Can a law or judicial decision be morally right but legally wrong?**

      Response: Yes.

   b. **Can a law or judicial decision be morally wrong but legally right?**

      Response: Yes.

   c. **You now represent the Commonwealth of Virginia. Would you defend a position that was legally wrong? Would you defend a position that was morally wrong?**

      Response: I would note that, as of July 31, I am no longer the Solicitor General of Virginia and have returned to my faculty position at the University of Virginia School of Law. In all of the roles where I have served as an advocate, my role was to make the best arguments I could on behalf of my clients that are consistent with the available facts and the then-governing law without regard to my own personal views.

d. If confirmed as a judge, would you uphold a law or action that you believed to be morally wrong but legal?

Response: Yes.

e. If confirmed as a judge, would you uphold a law or action that you believed to be morally right but illegal?

Response: No.

3. Does history have a "side"?

Response: Societies sometimes reach broad consensus about past events. For example, although the original Constitution expressly contemplated slavery, our Nation now acknowledges it to have been an abhorrent practice.

4. Should judges look to see which side of a litigation is likely to be on the side of history?

Response: No.

5. In your 2008 article *Doctrine Formulation and Distrust*, you wrote that, "Ascribing motivations to a multimember body is difficult at best." You were referring to the Supreme Court, but I believe this also applies to Congress. If confirmed as a judge, how would you go about the difficult task of discovering Congressional intent?

Response: If confirmed as a circuit judge, I would follow the Supreme Court's guidance about the proper method for determining Congress's intent. Specifically, I would begin with the text of the statute that Congress enacted. If necessary, I would also consult dictionary definitions, apply appropriate canons of construction or other interpretative principles, and review pertinent legislative history.

6. Isn't legislative history a helpful way to gauge Congressional intent?

Response: The Supreme Court has stated that legislative history can sometimes be helpful in interpreting an ambiguous statutory text and I would follow that guidance if confirmed.

7. What is your understanding of originalism?

Response: Broadly speaking, I understand "originalism" to be the view that the Constitution should be interpreted in the way the relevant text would have been understand at the time it was adopted.

8. What is your understanding of how an originalist views the Bill of Rights and subsequent Constitutional Amendments?

Response: I do not consider myself an expert in originalism. Broadly speaking, however, I believe that originalists view the Bill of Rights and subsequent Constitutional Amendments as parts of the Constitution that should be interpreted in the same manner as other constitutional provisions.

9. Do you know any originalists who ignore the Bill of Rights?

Response: Personally, no.

10. Do you know any originalists who believe black Americans should be counted as 3/5 of a vote?

Response: Personally, no.

11. Do you know any originalists who believe women should not be able to vote?

Response: Personally, no.

12. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using original public meaning?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), which involved a claim under the Second Amendment, the Supreme Court stated that "the public understanding of a legal text in the period after its enactment or ratification….is a critical tool of constitutional interpretation." *Id.* at 605. The Supreme Court has also considered original public meaning in construing the Confrontation Clause, *see Crawford v. Washington*, 514 U.S. 36 (2006), and certain questions under the Fourth Amendment, *see United States v. Jones*, 565 U.S. 400 (2012).

13. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using the living constitution?

Response: I am not aware of any areas of constitutional law where the Supreme Court has instructed lower courts to interpret using the "living constitution."

14. If confirmed, are you willing to interpret the Constitution according to its original public meaning when the Supreme Court has mandated you do so?

Response: Yes.

15. Have you read *A Matter of Interpretation* by Antonin Scalia?

Response: Yes.

16. Justice Scalia once said at Villanova Law School, "There is no such thing as a 'Catholic judge. The bottom line is that the Catholic faith seems to me to have little effect on my work as a judge . . . . Just as there is no 'Catholic' way to cook a hamburger, I am hard pressed to tell you of a single opinion of mine that would have come out differently if I were not Catholic." Do you agree with Justice Scalia? What do you view as the role of religion for a federal judge?

Response: All federal judges have a duty to decide the cases that come before them consistently with the law and without regard to the judge's personal religious beliefs.

17. Do you believe property damage caused during rioting, or even protests, should be prosecuted to the fullest extent of the law?

Response: Under our system of separation of powers, the decision about whether to bring a prosecution and what charges to pursue is generally a matter for local, state, and federal prosecutors. If confirmed as a judge, my responsibility would be to faithfully apply the law to individual cases that came before me.

18. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

Response: In *Schenk v. United States*, 249 U.S. 47, 52 (1919), the Supreme Court stated, in dicta, that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Id.* at 52.

19. In a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment? If not, how do you think it should be interpreted?

Response: In more than two decades as a lawyer, law professor, and law clerk, I have never encountered a constitutional issue where there was literally no relevant precedent and I suspect that very few such issues remain. If I were confirmed as a judge and were such an unlikely event to occur, I would begin by examining the text of the constitutional provision in question and any relevant precedent (including Supreme Court and Fourth Circuit precedent) considering similar issues or similarly worded constitutional provisions. If that precedent was insufficient to resolve the case, I would examine any sources that the Supreme Court has directed should be considered when applying the relevant constitutional provision.

20. What role should empathy play in interpreting the law?

Response: A judge is duty bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

21. You were counsel of record on an amicus brief in *Our Lady of Guadalupe School v. Morrissey-Berru*, arguing against a broad application of the ministerial exemption.

a. Why did you file this brief involving a case out of the Ninth Circuit?

Response: The brief in question was filed in my role as Solicitor General of Virginia. After the Attorney General decided that the Commonwealth of Virginia should file an amicus brief in that case, it was my responsibility to supervise the drafting of the brief and serve as counsel of record.

b. What do you understand to be the limits of the ministerial exemption under current law?

Response: In *Our Lady of Guadalupe*, the Supreme Court stated that "[w]hen a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." 140 S. Ct. 2049, 2069 (2020). As in a previous decision, the Court "declined to adopt a rigid formula" for assessing ministerial-exception claims and stated that, "as in" the previous case, "it is sufficient to decide the cases before us." *Id.*

22. Should judicial decisions take into consideration principles of social "equity"?

Response: Judicial decisions should be based on the claims of the parties, the relevant law, and the facts before the court.

23. What is implicit bias?

Response: I do not consider myself an expert in implicit bias. Broadly speaking, I understand it to be a branch of psychological research that examines types of cognition that operate below the level of conscious awareness.

24. Do you have any implicit biases? If so, what are they?

Response: I believe that all human beings, including me, have implicit biases that operate below the level of conscious awareness.

25. Are legal doctrine and practice best understood as an objective and defensible scheme of human association? Or are they better understood as of instrumental use for political ends?

Response: I have not studied that issue and I do not have an overarching theory of legal doctrine and practice is best understood.

26. How do you define formalism?

Response: Black's Law Dictionary defines "[l]egal formalism" as "[t]he theory that law is a set of rules and principles independent of other political and social institutions." *Black's Law Dictionary* 904 (7th ed. 1999).

27. Do you consider yourself a formalist?

Response: I do not think there is any single label that accurately captures the approach I would take to the act of judging if I were confirmed. If confirmed, I would carefully review the arguments of the parties, the decision under review, and the record and then apply all relevant law to those facts to the best of my ability.

28. Can the Supreme Court mandate formalism on lower courts?

Response: I am not aware of any Supreme Court decision that mandates formalism on lower courts. However, where the Supreme Court has directed lower courts to apply a particular analytical approach in addressing a particular type of case, I would faithfully apply that precedent if confirmed.

29. Can an appeals court mandate formalism on trial courts?

Response: I am not aware of any appellate court mandating formalism on trial courts. Broadly speaking, however, appellate court decisions create precedents that are binding on trial courts within the relevant jurisdiction.

30. Is the complexity of precedent and its multiplicity a feature or a bug of the law?

Response: The Supreme Court has noted that the doctrine of stare decisis "permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez v. Hillery*, 474 U.S. 254, 265-266 (1986).

31. How do you define legal realism?

Response: Black's Law Dictionary defines "[l]egal realism" as "[t]he theory that the law is based not on formal rules or principles, but instead on judicial decisions that should derive from social interests and public policy." *Black's Law Dictionary* 907 (7th ed. 1999).

32. Do you consider yourself a legal realist?

Response: I do not think there is any single label that would accurately capture the approach I would take to the act of judging if I were confirmed. If confirmed, I would carefully review the arguments of the parties, the decision under review, and the record and then apply all relevant law to those facts to the best of my ability.

33. Do you agree that all lawyers are, at some level, legal realists?

Response: I agree that lawyers must be realistic about what courts may and may not do and take that into account when advising and representing their clients.

34. Are you familiar with the Law and Economics movement?

Response: Broadly, yes.

35. What value, if any, do you see in Law and Economics?

Response: Insights developed by Law and Economics scholars have influenced numerous areas of law, including antitrust, contracts, and torts. If confirmed, I would faithfully apply all binding Supreme Court and Fourth Circuit precedent, including those that incorporate insight derived from Law and Economics.

36. Is the practice of judicial review defensible absent the existence of neutral legal principles?

Response: The Supreme Court has long held that "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

37. What is the purpose of criminal sentencing under the law?

Response: For federal cases, Congress has identified the purposes of criminal sentencing as:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3353(a)(2).

38. What is the purpose of criminal sentencing from a moral perspective?

Response: For federal cases, Congress has identified the purposes of criminal sentencing as:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3353(a)(2).

39. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?

Response: The role of a judge in imposing a criminal sentence is to find the underlying facts and apply the specified legal standards to reach an outcome that is consistent with what the law requires.

40. What is the relationship between morality and the law generally?

Response: In all cases, the role of a judge is to consider the arguments raised by the parties, review the underlying facts, and apply the specified legal standards to reach an outcome that is consistent with what the law requires.

41. What is your understanding of the original meaning of the Cruel and Unusual Punishment Clause?

Response: I have not studied the original meaning of the Eighth Amendment generally or the Cruel and Unusual Punishment Clause specifically. If confirmed, I would faithfully apply all Supreme Court and Fourth Circuit precedent concerning the Cruel and Unusual Punishment Clause.

42. Do you think law firms should allow paying clients to influence which pro bono clients they take?

Response: I believe that decisions about what clients a law firm should accept and under what conditions are for the law firm to make.

43. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?

Response: I believe that decisions about what law firm a client should engage are for the client to make.

44. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

Response: I believe that decisions about what clients a law firm should accept and under what conditions are for the law firm to make.

45. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: I do not.

46. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.

Response: Yes. For example, the Supreme Court has also held that "the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters" and that "[w]hen this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." *Serbian Eastern Orthodox Diocese for the United States v. Milivojevich*, 426 U.S. 696, 724-25 (1976).

47. What level of scrutiny applies to a Second Amendment challenge in the Fourth Circuit?

Response: The Fourth Circuit has adopted a two-part test for analyzing Second Amendment challenges. *See Schrader v. Holder*, 704 F.3d 980, 988 (2013). First, the Court considers "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee." *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). If the answer to this question is no, the inquiry ends. *Id.* If the answer is yes, the Court "move[s] to the second step of applying an appropriate form of means-end scrutiny," which "depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *Id.* at 680, 682. If the right is "severely buren[ed]," the Court applies strict scrutiny; if not, the Court applies intermediate scrutiny. *Kolbe v. Hogan*, 849 F.3d 114, 133, 145 (4th Cir. 2017) (en banc).

48. One of the federal courts' important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.

a. How would you determine whether statutory or regulatory text was ambiguous?

Response: Assuming that there was no applicable Supreme Court or Fourth Circuit precedent construing the specific provision at issue, I would, if confirmed, begin with the relevant statutory or regulatory text, applying (if necessary) any pertinent canons of construction or clear-statement rules.

b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?

Response: No.

c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?

Response: If confirmed, I would look to Supreme Court or Fourth Circuit precedent analyzing the same or similar language in other statutes or regulations, as well as legislative history as appropriate. I would also apply any pertinent interpretive principles, including the rule of lenity. Finally, I would consider the relevant views of any agency charged with administering the statute or that issued the regulation in question. *See Kisor v.Wilkie*, 139 S. Ct. 2400 (2019); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?

Response: If confirmed, I would begin by considering whether the Supreme Court or the Fourth Circuit has offered any guidance on the appropriate means of resolving any such apparent conflict. If no such guidance existed, I would consider other interpretive aids, described in Question 4(c), to resolve the issue.

49. Is climate change real?

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding the existence or extent of climate change, I would carefully review the facts and record of the case and apply any binding Supreme Court and Fourth Circuit precedent.

50. Do people have implicit racial bias?

Response: I believe that all human beings, including me, have implicit biases that operate below the level of conscious awareness. If confirmed, I would strive to ensure that all parties receive equal justice in all cases that come before me.

51. Does human life begin at conception?

Response: I am not aware of any Supreme Court decision definitely addressing when human life begins. If confirmed, and if a case came before me that required me to evaluate when human life begins, I would scrupulously review the facts and record of the case and apply all relevant Supreme Court and Fourth Circuit precedent.

52. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?

Response: If confirmed, I would have no litmus test for hiring law clerks.

53. The Blackstone Legal Fellowship "prepares Christian law students for careers marked by integrity, excellence, and leadership." Blackstone "is a program of Alliance Defending Freedom. ADF is the world's largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life." Would you hire a Blackstone Fellow to serve in your chambers as a law clerk?

Response: If confirmed, I would have no litmus test for hiring law clerks.

54. Please explain, with detail, the process by which you became a circuit-court nominee.

Response: On March 3, 2021, Senators Mark Warner and Tim Kaine posted a joint announcement seeking applications to serve as a United States Circuit Judge for the Fourth Circuit. I submitted an application on March 5, 2021. I then interviewed with a committee appointed by the Senators on April 9, 2021, and with the Senators themselves on April 27, 2021. On May 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

55. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: No.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: I did not ask anyone to have conversations with any such individuals on my behalf.

56. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: As someone who has been an appellate lawyer and law professor for many years, a large portion of my professional network consists of people who are associated with the American Constitution Society or the Federalist Society for Law and Public Policy, and I have spoken with many of those individuals about my interest in becoming a federal judge and this position in particular. My only contact with Russ Feingold is that he sent me an email congratulating me on my nomination.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: I did not ask anyone to have conversations with any such individuals on my behalf.

57. Please explain with particularity the process by which you answered these questions.

Response: I reviewed the questions and drafted my answers, conducting research wherenecessary. I provided my draft responses to the Department of Justice's Office of Legal Policy for review and feedback. After receiving feedback from the Office of Legal Policy, I revised and finalized my responses for submission.

58. Do these answers reflect your true and personal views?

Response: Yes.

Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
Toby J. Heytens, Nominee to be United States Circuit Judge for the Fourth Circuit

1. **In 2000 as a law student, you wrote that Blaine Amendments—amendments to state constitutions that ban the use of public funds to support religious schools—are possibly unconstitutional under the Equal Protection Clause. Does the position you took on Blaine Amendments in 2000 still reflect your thinking today?**

   Response: The argument referenced above is from a paper that I wrote as a law student more than two decades ago and that was published before the Supreme Court's subsequent decisions in *Zelman v. Simmons Harris*, 536 U.S. 649 (2002), *Locke v. Davey*, 540 U.S. 712 (2004), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020). If confirmed as a judge, it would be my obligation to decide any case that came before me under those precedents (as well as other relevant Supreme Court and Fourth Circuit precedent) rather than based on my own personal views.

2. **Would you describe yourself as an originalist? Do you think it is best to start with the original public meaning of the text when interpreting the Constitution?**

   Response: I do not think that there is any single label that accurately captures the approach I would take to the act of judging. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that "the public understanding of a legal text in the period after its enactment or ratification….is a critical tool of constitutional interpretation," *id.* at 605, and I would follow that guidance if confirmed.

3. **While defending Virginia Governor Ralph Northam's decision to remove the Robert E. Lee statute in Richmond, VA, you stated that there was a "tension between permitting private expression on government property and restricting it" in response to questions about whether the state was responsible for removing graffiti from the statute prior to its removal. Graffiti on government property is vandalism. As a judge, your views of the limits on free speech is important. Do you think that graffiti is an expression of free speech or is it a crime?**

   Response: I do not recall making the specific statement quoted in the question. Although I am not aware of any law specifically prohibiting graffiti, there are various laws that prohibit altering the property of another without permission to do so.

4. Virginia was one of a number of states that banned gatherings of more than 10 people in churches. You supported the state's decision. How do you balance that support with the respect for free religious expression that the constitution demands?

Response: As Solicitor General of Virginia, it was my duty to advocate for my clients (including the Governor) in various suits challenging measures that the executive branch of government had undertaken to combat the COVID-19 pandemic. No state or federal court in Virginia ever held that any of the challenged orders violated the Constitution by "prohibiting the free exercise" of religion. *See* U.S. Const. amends. I & XIV. However, I would note that, if confirmed as a judge on the U.S. Court of Appeals for the Fourth Circuit, I would apply Supreme Court and Fourth Circuit precedent to any cases that came before me on this issue, including *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Toby Jay Heytens, Nominee for the Fourth Circuit

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previouslyprovided.

If a question asks for a yes or no answer, please provide a yes or no answer first andthen provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible andwhat efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, pleasestate the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. In 2018, you accepted an invitation to speak on a panel entitled, "The Legal Resistance to the Trump Administration."

a. Did you ever publicly or privately describe yourself as the "resistance"? Ifso, please state the circumstances.

Response: Not to the best of my recollection.

b. In connection with this panel, did you ever criticize the use of the term "legal resistance"?

Response: Not to the best of my recollection.

c. Proponents of the term the legal "resistance" presumably mean to invoke the brave individuals in Europe in the first half of the 20th century who fought against Nazi rule. Do you believe that legal efforts to oppose the policies of President Trump were comparable to these individuals fightingagainst Nazi rule?

Response: I do not recall using the term "legal 'resistance,'" and I do not know what any "[p]roponents of the term" "mean to invoke" by it. I believe that comparisons to the unique historical horrors of the Nazi regime are almost always ill-advised.

d. Do you regret agreeing to serve on this panel given its title?

Response: The panel referenced above was part of William & Mary Law School's annual Supreme Court Preview, a long-standing and widely attended gathering of lawyers, journalists, law professors, and judges that I have attended several times. I did not choose the title of the panel and I do not regret agreeing to serve on it.

2. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: The Supreme Court has issued a number of opinions discussing the limits on government's ability to regulate private institutions, including religious organizations and small businesses operated by observant owners, including *Little Sister of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018), *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), and *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), among others. If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedent.

3. The First Amendment guarantees churches and religious institutions the freedom to determine their own religious leaders without government interference. Yet, as

Solicitor General of Virginia, you led an amicus brief in *Our Lady of Guadalupe School v. Morrissey-Berru*. In that brief, you argued that the government has the right to tell a Catholic school whether it can fire ateacher, even though we all know that teachers at Catholic schools teach muchmore than the three Rs—they teach children about the Catholic faith. This amicus brief wasn't about defending Virginia law.

a. Why did Virginia lead an amicus brief opposing religious freedom in this case?

Response: As with all Supreme Court amicus briefs for which I served as Counsel of Record in my role as Solicitor General of Virginia, the decision for the Commonwealth of Virginia to author that particular brief was made by its elected Attorney General.

b. Were you instructed to write this amicus brief, or did you recommend taking this position?

Response: As with all Supreme Court amicus briefs for which I served as Counsel of Record in my role as Solicitor General of Virginia, the decision for the Commonwealth to author that particular brief was made by its elected Attorney General. Because I was a lawyer for a client in that case, the duty of confidentiality prohibits me from disclosing any recommendations I made to or instructions I received from my client.

4. In the amicus brief referenced in question 3, you argued that applying the so- called "ministerial exception" to Catholic school teachers would be "overly broad" and would threaten to "severely undermine workplace protections at both the federal and state level." Do you believe that argument was correct?

Response: My role in the case referenced above was as an advocate for my client, the Commonwealth of Virginia, acting through its duly elected Attorney General. As a lawyer, my ethical obligations prevent me from expressing a personal opinion about whether any of my client's arguments—in any case—were or were not correct. In every case where I have represented a client, I have made good-faith arguments based on the current state of the law on behalf of my client's legal position. If confirmed as a judge, my role would be not to advocate for one side but instead decide each case consistently with the facts and the law.

5. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes.

6. During the pandemic, Virginia banned churches from having gatherings of more than 10 people while allowing businesses like liquor stores and professional offices to remain open. The Department of Justice filed a statement in support of the churches suing Virginia. The Supreme Court later ruled in a case addressing another state's

laws, that this discrimination againstchurches violated the First Amendment. But as Solicitor General, you defended these orders.

a. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: The Supreme Court has stated that laws that discriminate on basis of religion are subject to strict scrutiny. *See, e.g.*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). To survive that standard, the challenged law "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Id.* (internal quotation marks and citation omitted).

b. In your brief defending Virginia against allegations of religiousdiscrimination, you wrote that Virginia's actions were "evidence-based." Is there an "evidence-based" exception to the freedom of religion?

Response: The First Amendment states that "Congress shall make no law … prohibiting the free exercise" of religion. U.S. Const. amend. I. This command is incorporated against the States via the Due Process Clause of the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940). The Supreme Court has stated that "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny" and that, to satisfy that standard, such a law "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

7. In 2018, the Supreme Court held in *Janus v. American Federation of State, County, and Municipal Employees*, that it violates the First Amendment for a state to require its employees to donate to a union. Shortly after that decision was handed down, you wrote an article for SCOTUSblog saying the decision would "severely undermine the ability of public-sector unions to provide protections, benefits, and fair pay to working people." Should the Court have considered these policy consequences when deciding *Janus*?

Response: In *Janus*, the Supreme Court specifically "assume[d] that 'labor peace' … is a compelling state interest" and extensively considered whether "designation of a union as the exclusive representative of all the employees in a unit and the exaction of agency fees are inextricably interlinked." 138 S. Ct. 2448, 2465 (2018).

8. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

Response: The Constitution states that the President "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

9. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.

Response: There is no single label I would use to describe the approach I would take to judging. Although I admire many past and current members of the Supreme Court, my admiration does not flow from their jurisprudence or how they may have voted in any particular case. I admire Justices Thurgood Marshall and Ruth Bader Ginsburg for their trailblazing work in advancing equality before they joined the bench, and, as an appellate advocate, I admire the craft they demonstrated in written and oral advocacy. I admire Justices Antonin Scalia and Elena Kagan for their writing ability. I also admire Justices John Paul Stevens and Samuel Alito for their skill in crafting incisive questions that cut to the heart of cases before them.

10. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Supreme Court's understanding of certain constitutional provisions has changed over time. *Compare, e.g.*, *Plessy v. Ferguson*, 163 U.S. 537 (1896) (interpreting the Equal Protection Clause as permitting "separate but equal"), *with Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (stating that the Court "cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written" and concluding "that in the field of public education the doctrine of 'separate but equal' has no place"). If confirmed, I would follow all applicable Supreme Court and Fourth Circuit precedent concerning the meaning of the Constitution in applying its provisions.

11. Is the ability to own a firearm a personal civil right?

Response: Yes. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

12. Does the right to own a firearm receive less protection than the other individualrights specifically enumerated in the Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that: "Like most rights, the Second Amendment right is not unlimited." *Id.* at 595. If confirmed, I will faithfully follow all Supreme Court and Fourth Circuit precedent about the meaning and scope of the Second Amendment.

13. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that: "Like most rights, the Second Amendment right is not unlimited." *Id.* at 595. If confirmed, I will faithfully follow all Supreme Court and Fourth Circuit precedent about the meaning and scope of the Second Amendment.

14. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I am not aware what training programs are or are not provided by the United States Court of Appeals for the Fourth Circuit or what roles the judges of the court play in determining their existence or content. Any trainings programs that exist must be consistent with the Constitution and laws of the United States and should be consistent with sound pedagogy.

15. Is the criminal justice system systemically racist?

Response: I have never studied the criminal justice system as a whole or had occasion to conduct quantitative or qualitative research about whether it is systemically racist. If confirmed as a judge, it would be my job to make sure that no one involved in any matters before me is treated unfairly because of their race.

16. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: The executive and legislative branches are responsible for making political appointments and are required to follow the Constitution in doing so. If confirmed and called on to rule on the constitutionality of a particular executive appointment, I would follow all Supreme Court and Fourth Circuit precedent in resolving that case.

17. Does the President have the authority to abolish the death penalty?

Response: Article I of the Constitution vests Congress with "[a]ll legislative Powers herein granted." U.S. Const. art. I, § 1. The Constitution further states that "[t[he executive Power shall be vested in a President," U.S. Const. art. II, § 1, and specifically grants the President the "Power to grant Reprieves and Pardons for Offenses against the United States," U.S. Const. art. II, § 2.

18. In *Van Buren v. United States*, the Court was asked to clarify the scope of Section 1030(a)(2) of the Computer Fraud and Abuse Act of 1986. Please explain the Court's holding in that case.

Response: In *Van Buren*, the Supreme Court held that the provision in question "covers those who obtain information from particular areas in the computer—such as files, folders, or databases—to which their computer access does not extend." 141 S. Ct. 1648, 1652 (2021). The Court further held that the provision "does not cover those who, like Van Buren, have improper motives for obtaining information that is otherwise available to them." *Id.*

19. In *Americans for Prosperity Foundation v. Bonta,* the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to suchcases. Please explain

your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: In *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021), the Chief Justice wrote for a plurality of the Court that "[r]egardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny." *Id.* at 2384. Justice Thomas wrote a separate opinion concurring in part and concurring in the judgment, arguing that the challenged law should be subject to strict scrutiny. *Id.* at 2390 (Thomas, J., concurring in part and concurring in the judgment). Justice Alito wrote a separate opinion concurring in part and concurring in the judgment that was joined by Justice Gorsuch, stating that he saw "no need to decide which standard should be applied here or whether the same level of scrutiny should apply in all cases in which the compelled disclosure of associations is challenged under the First Amendment." *Id.* at 2392 (Alito, J., concurring in part and concurring in the judgment). In *Marks v. United States*, 430 U.S. 188 (1977), the Supreme Court provided guidance for determining a case's holding "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices," *id.* at 193, and I would follow that guidance if confirmed as a judge.

20. In the Supreme Court's decision in *Carpenter v. United States,* what criteria did the Supreme Court use to distinguish between phenomena that are covered by the 4th Amendment 3rd Party Doctrine and those that are not?

Response: In *Carpenter*, the Supreme Court cited "the unique nature of cell phone location records"—which convey "not just dialed digits, but a detailed and comprehensive record of the person's movements"—for its decision to "decline to extend" its previous third-party doctrine cases "to cover these novel circumstances." 138 S. Ct. 2206, 2217 (2018).

Senator Josh Hawley
Questions for the Record

Toby Heytens
Nominee, U.S. Court of Appeals for the Fourth Circuit

1. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: I do not recall any such cases before becoming Solicitor General of Virginia. In my role as Solicitor General of Virginia, I was responsible for overseeing all of the Commonwealth's appellate litigation (including claims brought by incarcerated individuals, which sometimes involved religious liberty claims), as well as defending constitutional challenges to Virginia statutes and various actions taken in response to the COVID-19 pandemic.

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

      Response: The cases I am able to specifically recall are:

      Argued cases
      Greenhill v. Clarke, 944 F.3d 243 (4th Cir. 2019)

      Diaz-Bonilla v. Northam, 1:20-cv-00377-AJT (E.D. Va., June 5, 2020)

      Hughes v. Northam, Case No. CL20-415 (Russell County Cir. Ct., April 9, 2020)

      Other briefed cases
      Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049 (2020)

      Burke v. Clarke, 842 F. App'x 828 (4th Cir. 2021)

      Gentry v. Robinson, 837 F. App'x 952 (4th Cir. 2020)

      Updegrove v. Herring, No. 1:20-CV-1141, 2021 WL 1206805 (E.D. Va., Mar. 30, 2021), appeal pending (4th Cir. Case No. 21-1506)

      Lighthouse Fellowship Church v. Northam, No. 2:20CV204, 2021 WL 302446 (E.D. Va. Jan. 27, 2021), appeal pending (4th Cir. Case No. 21-1153)

      Calvary Road Baptist Church v. Herring, Case No. CL20006499 (Loudoun Cir. Ct.)

      Young v. Northam, Case No. CL-20-2010 (Culpeper Cir. Ct., Feb. 27, 2021)

Hermsmeier v. Northam, Case No. 20004844 (Madison Cty. Cir. Ct.)

2. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *Id.* at 605.

3. Do you consider legislative history when interpreting legal texts?

Response: The Supreme Court has stated that legislative history can sometimes be helpful in interpreting ambiguous statutory text and I would follow that guidance if confirmed.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: The Supreme Court has stated that certain forms of legislative history are more persuasive than others. For example, the Court has stated that "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute." *United States v. Craft*, 535 U.S. 274, 285 (2002) (internal quotation marks and citation omitted).

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: The Constitution is a domestic document. If confirmed, I would look to the text, structure, and background of the Constitution itself in carrying out the task of constitutional interpretation.

4. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: To prevail on such a claim, a claimant must show that the challenged method creates a substantial risk of severe pain when compared to known and available alternatives that present a significantly reduced risk of severe pain. *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015); *see also Baze v. Rees*, 553 U.S. 35, 51-52 (2008).

5. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Yes. *See Glossip v. Gross*, 135 S. Ct. 824, 867 (2015).

6. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: Neither the Supreme Court nor the Fourth Circuit has recognized a freestanding constitutional right to DNA analysis for habeas corpus petitioners alleging actual innocence. *See, e.g., District Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 72 (2009) (finding no substantive due process right to DNA evidence). Both the Supreme Court and the Fourth Circuit have recognized that state law can create "a liberty interest in demonstrating [a prisoner's] innocence with new evidence under state law." *Id.* at 68; *see also Lamar v. Ebert*, 681 F. App'x 279, 288 (4th Cir. 2017) (per curiam).

7. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No.

8. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: Under current free exercise doctrine, "laws incidentally burdening religious are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Id.* at 1877. "A law is not generally applicable if," among other things, "it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* (internal quotation marks, brackets, and citation omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.*; *see also Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam) (addressing COVID gathering restrictions).

9. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my answer to Question 8.

10. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The Fourth Circuit has cautioned that "[i]t is not [the] place" of a court "to question the correctness or even the plausibility of [a claimant's] religious understanding." *United States Equal Employment Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142 (4th Cir. 2017). "So long as there is sufficient evidence that [the] beliefs are sincerely held[,] . . . that is the end of the matter." *Id.* at 143.

11. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *Heller*, the Supreme Court held that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. *See* 554 U.S. at 576-628.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

12. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: As Justice Holmes explained in that same opinion, I believe he meant that the "Constitution is not intended to embody a particular economic theory." *Lochner*, 197 U.S. at 75 (Holmes, J., dissenting).

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: If confirmed, I would be bound to follow all governing Supreme Court and Fourth Circuit precedent. *Lochner* was largely abrogated by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

13. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: As the Court elsewhere explained, "*Korematsu* was gravely wrong the day it was decided" and "has no place in law under the Constitution." *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

14. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

Response: I do not believe that *Prigg v. Pennsylvania*, 41 U.S. 539 (1843), or *Dred Scott v. Sandford*, 60 U.S. 393 (1857), have been "formally overruled by the Supreme Court" but both have been superseded by the Reconstruction Amendments. I suspect that the same may be true of certain other pre-Civil War decisions as well.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

15. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: I am not familiar with the quoted statement by Judge Learned Hand. If confirmed, I would be required to—and would—faithfully apply governing Supreme Court and Fourth Circuit precedent about what constitutes a monopoly.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my answer to Question 15(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: If confirmed, I would be required to—and would—faithfully apply governing Supreme Court and Fourth Circuit precedent regarding what constitutes a monopoly.

16. Please describe your understanding of the "federal common law."

Response: Broadly speaking, I understand federal common law to refer to rules of decision that are formulated by federal courts as part of their Article III authority to decide cases and controversies that come before them. The Supreme Court has long emphasized, however, that "[t]here is no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

17. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: The meaning of a state constitutional provision is ultimately a matter of state law upon which federal courts must defer to the decisions of the highest court of the relevant State. *See generally Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 17(a).

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Because the Federal Constitution is the "supreme Law of the Land," U.S. Const., art. VI, ¶ 2, its protections are binding on the States, regardless of what a State's own constitution provides. The meaning of a state constitutional provision is ultimately a matter of state law upon which federal courts must defer to the decisions of the highest court of the state. *See generally Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

18. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: Yes.

19. Do federal courts have the legal authority to issue nationwide injunctions?

Response: The Fourth Circuit has stated that "[a] district court may issue a nationwide injunction so long as the court molds its decree to meet the exigencies of the particular case." *Hias, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021).

a. If so, what is the source of that authority?

Response: The Fourth Circuit has noted that "[d]istrict courts have broad discretion to craft remedies based on the circumstances of a case." *Hias, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021).

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: The Fourth Circuit has emphasized that although "[d]istrict courts have broad discretion to craft remedies based on the circumstances of a case," they "likewise must ensure that" an injunction "is no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Hias, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021) (internal quotation marks and citation omitted).

20. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: The Fourth Circuit has stated that "a nationwide injunction may be appropriate when the government relies on a categorical policy, and when the facts would not require different relief for others similarly situated to the plaintiffs." *Hias, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021) (internal quotation marks and citation omitted).

21. What is your understanding of the scope of qualified immunity?

Response: The Supreme Court has stated that "government officials performing discretionary functions generally are granted a qualified immunity and are 'shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Wilson v. Layne*, 526 U.S. 603, 609 (1999) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

22. What is your understanding of the role of federalism in our constitutional system?

Response: The Supreme Court has stated that "allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people, from whom all governmental powers are derived." *Bond v. United States*, 564 U.S. 211, 221 (2011).

23. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: The Supreme Court has held that federal courts should generally refrain from intervening in ongoing state criminal proceedings. *See Younger v. Harris*, 401 U.S. 37 (1971). The Court has also held that abstention may sometimes be appropriate in other situations, including "pending determination in state court of state-law issues central to [a] constitutional dispute," *Moore v. Sims*, 442 U.S. 415, 427-28 (1979) (citing *Railroad Comm'n v. Pullman*, 312 U.S. 496 (1941)), or "where the exercise of

jurisdiction by the federal court would disrupt a state administrative process," *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 189 (1959) (citing *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)).

24. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The Supreme Court has described an injunction as "extraordinary remedy" whose issuance requires "irreparable injury and the inadequacy of legal remedies," including damages. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

25. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the Fifth and Fourteenth Amendments protect certain unenumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition"and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S.702, 720-21 (1997) (internal quotation marks and citations omitted). In *Glucksberg*, the Court collected cases previously recognizing such rights, including the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972), bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). *Id.* at 720; *see also Obergefell v. Hodges*, 576 U.S. 644 (2015) (recognizing a right of same-sex couples to marry); *Saenz v. Roe*, 526 U.S. 489 (1999) (recognizing a right to travel). The Supreme Court has also "assumed, and strongly suggested" that there is a "right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. at 720.

26. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: Please see my response to Question 8.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: No. For example, the Supreme Court has stated that "[t]he Free Exercise Clause protects against laws that impose special disabilities on the basis

of religious status." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 U.S. 2012, 2021 (2007) (internal quotation marks, brackets, and citations omitted).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question 8

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 10.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Supreme Court has stated that, where it applies, "RFRA operates as a kind of super statute, displacing the normal operation of other federal laws." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020). If confirmed, I would follow all relevant precedent of the Supreme Court and the Fourth Circuit construing RFRA and other federal statutes.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

27. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: I am not aware of any Supreme Court or Fourth Circuit decision expressing the beyond a reasonable doubt standard in terms of a numerical confidence threshold.

28. Under American law, a law enforcement officer may obtain a warrant to conduct a search or seizure only for "probable cause." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that a police officer has "probable cause"? Please provide a numerical answer.

Response: I am not aware of any Supreme Court or Fourth Circuit decision expressing the probable cause standard in terms of a numerical confidence threshold. The Supreme Court has stated that "an effort to fix some general, numerically precise degree of certainty corresponding to 'probable cause' may not be helpful." *Illinois v. Gates*, 462 U.S. 213, 235 (1983).

29. Under American law, a law enforcement officer may stop and detain an individual based on "reasonable suspicion" that criminal activity is afoot. On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that someone has "reasonable suspicion"?

Response: I am not aware of any Supreme Court or Fourth Circuit decision expressing the reasonable suspicion standard in terms of a numerical confidence threshold. The Supreme Court has stated that "[a]lthough a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (citations omitted).

30. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: I am not aware of any Supreme Court or Fourth Circuit decisions addressing the situation presented in this question. In confirmed, I will faithfully follow all precedent of the Supreme Court and the Fourth Circuit.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: Please see my response to Question 30(a).

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my response to Question 30(a).

31. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Federal Rule of Appellate Procedure 32.1(a)(i) specifically recognizes the ability of federal courts of appeals to designate certain dispositions as "unpublished."

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see answer to Question 31(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: Fourth Circuit Local Rule 32.1 specifically recognizes that unpublished opinions may have "precedential value." 4th Cir. Local R. 32.1. If confirmed, I would follow that rule.

d. If not, how is this consistent with the rule of law?

Response: Please see answer to Question 31(c).

32. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Yes. *See* 4th Cir. Local R. 32.1.

a. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: The local rules of the Fourth Circuit provide that citation of unpublished opinions issued prior to January 1, 2007, is disfavored except for certain limited purposes, but contain no similar admonition with respect to unpublished opinions issued on or after January 1, 2007. *See* 4th Cir. Local R. 32.1.

b. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: The local rules of the Fourth Circuit do not prohibit litigants from citing any unpublished opinions. *See* 4th Cir. Local Rule 32.1.

33. "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I am not familiar with the specific statement quoted above. I understand it to mean that a judge who is faithfully interpreting and applying the law will sometimes reach a result that is, in the judge's personal opinion, an undesirable outcome.

34. "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I am not familiar with the specific statement quoted above. Broadly speaking, I understand it to mean that there is an important difference between the power to make general rules and the duty to apply those rules in particular situations and that the job of a judge is to apply the law rather than to make the law.

b. Do you agree or disagree with this statement?

Response: Based on the understanding set out in the previous subpart, I agree with the statement.

35. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I believe that Justice Holmes meant that it is the duty of a judge to set aside any personal views and decide cases consistent with what the facts and law requires.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: Based on the understanding set out in the previous subpart, I agree with Justice Holmes's statement.

36. Have you ever taken the position in a publication that a federal or state statute was unconstitutional?

Response: To the best of my recollection, no.

a. If yes, please provide appropriate citation.

37. Have you ever taken the position in litigation that a federal statute was unconstitutional?

Response: To the best of my recollection, I have never argued as a lawyer that a federal statute was unconstitutional

a. If yes, please provide appropriate citation.

38. Have you ever taken the position in litigation that a state statute was unconstitutional?

Response: To the best of my recollection, I have never argued as a lawyer that a state statute was unconstitutional.

a. If yes, please provide appropriate citation.

39. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Although my ethical obligations prohibit me from identifying specific matters where a position I took as an advocate on behalf of a client was inconsistent with my personal views, I can confirm that such cases have existed.

a. How did you handle the situation?

Response: I fulfilled my duty to advocate zealously on behalf of my client's position and made good-faith, legally supported arguments to that end.

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

40. What three law professors' works do you read most often?

Response: For the last three and a half years, I have been engaged in full-time legal practice and have not read a significant amount of work by law professors. I have, however, frequently consulted the work of Professor A.E. (Dick) Howard, who served as the executive director of Virginia's Commission on Constitutional Revision and wrote a two-volume "Commentaries on the Constitution of Virginia."

41. Which of the Federalist Papers has most shaped your views of the law?

Response: *Federalist* No. 78 (Hamilton).

42. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: Although I do not recall a specific judicial opinion, law review article, or other legal opinion that cause me to change my mind about an opinion that I had already

formed, I remember finding Charles Black's article "The Lawfulness of the Segregation Decisions" particularly persuasive the first time I read it.

43. In a Notre Dame Law Review article, you drew a contrast between the behavior of the modern Supreme Court and "the fact that the Justices of the Warren era were willing to bear enormous costs to achieve even partial compliance with their vision of a better, fairer, criminal justice system." You also stated that their willingness to bear costs "suggests that [the Justices] were enormously committed to that goal."[1]

a. Does your understanding of judicial power allow for judges to push for their "vision of a better, fairer" system?

Response: The article referenced in the question was written more than a decade ago in my role as a law professor and focused on the U.S. Supreme Court. If confirmed as a judge on the U.S. Court of Appeals for the Fourth Circuit, it would be my duty to apply the law to the facts to reach the legally correct answer in specific cases that came before me.

b. Under your conception of the judicial power, what do you believe are appropriate goals for judges?

Response: I believe that the appropriate goals for judges consist of correctly applying the law to the facts while treating those who come before the courts with fairness and respect.

c. If you are confirmed, the opinions you write will be binding precedent in the Fourth Circuit. As a judge, how would you approach the question of what costs are worth bearing in order to achieve compliance with the rules laid out in your opinions?

Response: If confirmed a judge, my role would be to apply the law to the facts to reach the legally correct result in specific cases that came before me.

44. You authored an article in the Stanford Law Review on the practice of judges on Courts of Appeals remanding a case and reassigning the lower court judge.[2]

a. If you are confirmed, how would you approach reassignment?

Response: The Fourth Circuit has stated that it considers three factors in deciding whether reassignment is warranted in a particular case:

> (1) [W]hether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected;

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[1] Toby Heytens, *Doctrine Formulation and Distrust*, 83 Notre Dame L. Rev. 2045, 2102 (2008).
[2] Toby Heytens, *Reassingment*, Toby J. Heytens, 66 Stan. L. Rev. 1 (2014).

(2) whether reassignment is advisable to preserve the appearance of justice; and
(3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

United States v. Martinovich, 810 F.3d 232, 245 (4th Cir. 2016). If confirmed, I would follow that precedent.

b. Under what circumstances would you advocate for reassigning a trial court judge?

Response: Please see my response to Question 44(a).

c. What other tools (other than precedent) do Court of Appeals judges have to "control" trial judges?

Response: Federal courts of appeals have jurisdiction to review the decisions of federal district courts. Such review must be conducted in accordance with governing legal principles.

d. Under what circumstances is it appropriate for those tools to be used?

Response: Please see my response to Question 44(c).

45. On behalf of Virginia and several other states, you filed an amicus brief in *Our Lady of Guadalupe School v. Morrissey-Berru*.[3] In section III of that brief, you argued that "the approach advocated by petitioners and the federal government would undermine workplace anti-discrimination protections."

a. This case was focused on interpreting the First Amendment. Can you explain what bearing the effect on anti-discrimination laws has had on interpreting the scope of the First Amendment?

Response: The brief referenced in the question was filed on behalf sixteen States and the District of Columbia. The brief argued that, "regardless of how the federal government chooses to draw the line in its own statutes and policies[,] States have a strong interest in preserving the ability to strike their own balance between employers' claims to religious autonomy and employees' right to be free from invidious discrimination."

b. In that brief, you wrote that "progress towards eradicating discrimination in the workplace requires sustained investment and consistent enforcement of the full panopoly of anti-discrimination protections." Why did you think it was appropriate to treat religious institutions as mere "employers," in light

[3] Brief of Amicus Curiae of the States of Virginia, California and 15 Other States Supporting Respondents, *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ____ (2020), 2020 WL 1478592.

of our nation's history and the protections enshrined in the First Amendment?

Response: The federal statutes at issue in the two cases referenced in the questions contained specific provisions defining the term "employer." *See* 28 U.S.C. § 630(b); 42 U.S.C. § 12111(5)(A).

46. You authored a student note in the Virginia Law Review arguing that "many (if not all) [Blaine Amendments] violate the Equal Protection Clause."[4]

a. What is the difference between the views articulated in this note and the Supreme Court's eventual decision in *Espinoza v. Montana Dep't of Revenue*, 140 S.Ct. 2246 (2020)?

Response: The student note in question was written more than two decades before the Supreme Court's decision in *Espinoza* and before numerous other Supreme Court decisions handed down between 2000 and 2020. I have not specifically considered the differences (if any) between the arguments I made as a law student and the conclusions reached by the Supreme Court in *Espinoza*. If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedent, including *Espinoza*.

b. What prompted your early interest in religious liberties in law school?

Response: To the best of my recollection, one of my professors suggested the topic for my student note.

c. How would you describe the importance of religious liberties in your professional career?

Response: The protection of religious liberty is a vitally important part of our constitutional system. If confirmed, I would faithfully apply all Supreme Court and Fourth Circuit precedent, including precedent involving religious liberty.

47. After the Supreme Court released its opinion in *Trump v. Vance*, 140 S.Ct. 2412 (2020), you co-authored a portion of a symposium on the decision for SCOTUSblog.[5] At the end of this symposium entry, you stated "the fact that the court reached the right result on presidential immunity shouldn't obscure our indignation that the question was asked in the first place."

a. What did you mean by this?

Response: I do not recall specifically what my co-author and I meant by that specific statement from a blog post written more than a year ago. As we

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[4] Toby Heytens, *School Choice & State Constitutions*, 86 Va. L. Rev. 117 (2000).

[5] Martine Cicconi and Toby Heytens, *Symposium: Channeling an old chief to reject a new immunity*, SCOTUSblog (Jul. 10, 2020, 4:59 PM), https://www.scotusblog.com/2020/07/symposium-channeling-an-old-chief-to-reject-a-new-immunity/

explained in that post, however, our view was that the question before the Court in that case had been already been answered by Chief Justice Marshall "more than two centuries ago."

b. Under what circumstances should we be indignant when an individual asserts what they perceive to be their rights?

Response: Under our adversarial system, individuals have the power to assert what they perceive to be their rights and courts have a responsibility to adjudicate those claims in accordance with the law.

48. When evaluating restrictions on firearms ownership under the Second Amendment, some U.S. Courts of Appeals seem to have adopted tests that resemble intermediate scrutiny.[6]

a. Please articulate your understanding of the test for evaluating restrictions of firearm ownership that the Supreme Court explained in the *Heller* decision.

Response: Because *District of Columbia v. Heller*, 554 U.S. 570 (2008), was the Supreme Court's "first in-depth examination of the Second Amendment," the Court specifically declined to attempt "to clarify the entire field" or adopt a single test for evaluating all conditions on firearm ownership. *Id.* at 635. Instead, the Court held that the law before it failed "any of the standards of scrutiny that we have applied to enumerated constitutional rights." *Id.* at 628.

b. How is this test similar or dissimilar from intermediate scrutiny?

Response: Please see my response to Question 48(a).

c. How is this test similar or dissimilar from a cost-benefit analysis?

Response: Please see my response to Question 48(a).

49. Many States, including Virginia, imposed strict COVID-19 restrictions without making appropriate exceptions for religious institutions. The Supreme Court ultimately struck down restrictions of this type in *South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716 (2021) and in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020).

a. When you handled cases defending Virginia's COVID-19 restrictions, what steps did you take to make sure that Virginia's restrictions adequately took into consideration the religious liberties of its citizens?

Response: My role in the cases referenced above was an advocate defending the legality of actions taken my clients, including the Governor of Virginia and the State Health Commissioner. To the best of my knowledge, no court has ever held

[6] *See Silvester v. Becerra*, 138 S.Ct. 945 (2018) (Thomas, J., dissenting from denial of certiorari) (discussing lower court decisions).

that any of Virginia's COVID-19 mitigation measures unlawfully infringed religious liberty.

b. Were you involved in the promulgation of these regulations?

Response: The regulations were promulgated by my clients, the Governor of Virginia and/or the State Health Commissioner.

c. What solicitude was made for religious liberties?

Response: Throughout the COVID-19 pandemic, Virginia has made special accommodations for religious practices. In-person worship services were never suspended and even the temporary stay-at-home order specifically permitted traveling to and from places of worship. Virginia lifted all numerical attendance limits on in-person religious services on July 1, 2020—more than four months before the Supreme Court's decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), and more than eight months before the Supreme Court's decision in *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021).

50. Please provide a detailed summary of the process that led to your nomination.

Response: On March 3, 2021, Senators Mark Warner and Tim Kaine posted a joint announcement seeking applications to serve as a United States Circuit Judge for the Fourth Circuit. I submitted an application on March 5, 2021. I interviewed with a committee appointed by the Senators on April 9, 2021, and with the Senators themselves on April 27, 2021. On May 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, the President announced his intent to nominate me.

a. Who first raised the possibility of your nomination?

Response: I do not recall who specifically "first raised the possibility of [my] nomination," but I was aware of the vacancy soon after it was reported that Judge Barbara Keenan was taking senior status.

b. Have you spoken with any interest groups, such as Demand Justice, concerning your nomination?

Response: No.

c. How many conversations did you have with White House staff leading up to your nomination?

Response: On May 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Shortly thereafter, I was informed by a member of the White House staff that they wished to begin a formal vetting process. On June 29, 2021, a member of the White House staff told me that the President would be announcing his intent to nominate me the next day.

Questions for the Record for Toby Heytens
From Senator Mazie K. 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?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee Questions
for the Record
Toby Heytens, Fourth Circuit Court of Appeals

1. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: If confirmed, I would first determine whether the Supreme Court or Fourth Circuit had previously interpreted the specific statutory provision at issue. If there was no such precedent, I would begin with the text of the statute, including any relevant statutory definitions, and also consider any applicable canons of construction or other interpretive principles. In appropriate cases, I also would consider persuasive authority from other courts, as well as legislative history.

2. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: If confirmed, I would first determine whether the Supreme Court or Fourth Circuit had previously interpreted the specific constitutional provision at issue. Although I believe it would be rare to confront a constitutional issue of true first impression as a circuit court judge, if such a situation were to arise, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or Fourth Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

3. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *Id.* at 605.

4. **If a constitutional provision is ambiguous, and there is no controlling precedent, would it be appropriate to consult—as Justice Stephen Breyer contends—"the values" underlying the provision's language?**

Response: I am not familiar with the statement by Justice Breyer quoted above or the context in which it was made. If I were confirmed as a judge and confronted such a case, I would examine the overall structure of the provision; the use of similar language (and previous constructions) in other portions of the Constitution or predecessor documents; historical materials; case law considering analogous questions; and any other guidance the Supreme Court has provided for construing constitutional provisions. In any such case, I also would be bound by the record created by the parties.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: The Supreme Court has repeatedly stated that statutory interpretation begins with the text and that, when the text is clear, it ends there as well. *See, e.g., National Ass'n of Manufacturers v. Department of Defense*, 138 S. Ct. 617, 631 (2018). If confirmed, I would faithfully follow that guidance.

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: My understanding is that "plain meaning" generally refers to a term's ordinary meaning at the time of its enactment.

7. If confirmed, would you consult legislative history when interpreting ambiguous statutory terms?

Response: The Supreme Court has considered legislative history in interpreting ambiguous statutory text, *see County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1471-72 (2020), and I would follow that guidance if confirmed.

8. If confirmed, would you look to the underlying purpose of a Congressional statute to construe ambiguous provisions?

Response: If confirmed, I would first look at the text of the statute and the binding precedent of the Supreme Court or Fourth Circuit. If I needed to go beyond those sources to rule on a case, I would look at the context in which the text was found (including any express "purpose" section in the statute), apply any relevant canons or other principles of interpretation, consult any pertinent legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

9. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: Since at least *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court has recognized that Congress has powers beyond those expressly enumerated in the Constitution by virtue of the Necessary and Proper Clause.

10. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would apply the relevant Supreme Court and Fourth Circuit precedent to evaluate the constitutionality of the law. For example, I would look to *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), in evaluating whether Congress had the authority to enact a law under the Commerce Clause.

11. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held that the Fifth and Fourteenth Amendments protect certain unenumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition"and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S.702, 720-21 (1997) (internal quotation marks and citations omitted). In *Glucksberg*, the Court collected cases previously recognizing such rights, including the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972), bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833(1992). *Id*. at 720; *see also Obergefell v. Hodges*, 576 U.S. 644 (2015) (recognizing a right of same-sex couples to marry); *Saenz v. Roe*, 526 U.S. 489 (1999) (recognizing a right to travel). The Supreme Court has also "assumed, and strongly suggested" that there is a "right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. at 720.

12. What rights are protected under substantive due process?

Response: Please see my response to Question 11.

13. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: My response to Question 11 is not based on my personal beliefs, but rather my understanding of current Supreme Court's precedent. If confirmed, I will faithfully apply all Supreme Court precedent, regardless of any opinion I may have about the merits of the Court's decisions.

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Supreme Court has emphasized that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (internal quotation marks and citation omitted).

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: In *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court emphasized that "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 177. If another branch of government purports to assume an authority not granted to it by the Constitution, it is duty of the judicial department to disregard the improper exercise of power.

16. What role should empathy play in a judge's consideration of a case?

Response: A judge is duty bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding alaw that is, in fact, unconstitutional?

Response: Both outcomes are equally undesirable.

18. How would you explain the difference between judicial review and judicial supremacy?

Response: I understand judicial review to refer to the ability of the judicial branch to assess the legality of actions taken by the legislative or executive branch. Although others may have a different view, I understand judicial supremacy to refer to the (in my view, incorrect) view that courts have the sole ability or obligation to interpret the Constitution.

19. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affectingthe whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials swear an oath to uphold the Constitution. They are also required to follow properly issued judicial decisions about the meaning of the Constitution. *See, e.g., Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

20. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: Federal courts do not share the legislature's power to decide what the law should be or the executive's power to enforce the law. A court's role is limited to interpreting what the law is, and only in cases involving actual controversies that are brought before it.

21. As a circuit court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does notappear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extendthe precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed as a circuit court judge, it will not be within my purview to question the constitutional underpinnings of binding precedent or limit its applicability beyond what Supreme Court or Fourth Circuit precedent requires. If confirmed, I will be bound to fully and faithfully apply binding precedent to the cases before me regardless whether I agree with it.

22. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

Response: No.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: 18 U.S.C. § 3553(a) specifies the factors a federal judge shall consider when imposing a sentence. No sentencing judge should discriminate when sentencing based on race, gender, nationality, sexual orientation, or gender identity.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and

queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I was not previously familiar with any statement from the Biden Administration defining equity. If a case involving the definition of "equity" came before me, I would look first to Supreme Court and Fourth Circuit precedent to define it. If confirmed, my personal views about the Executive Branch's definition of equity would not factor into any case.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: Black's Law Dictionary defines "[e]quity" as "[f]airness; impartiality; evenhanded dealing," and "[t]he body of principles constituting what is fair and right; natural law." *Black's Law Dictionary* 560 (7th ed. 1999). The same source defines "[e]quality" as "[t]he state of being equal; esp., likeness in power or political status." *Black's Law Dictionary* 556 (7th ed. 1999).

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The text of the 14th Amendment does not include the term "equity".

27. How do you define "systemic racism?"

Response: I am not aware of any consensus definition of "systemic racism," nor do I have a personal definition of that term. Although I am aware that there is much public discussion and debate about the issue, any personal views I have would not be relevant to any decisions I would make were I confirmed as a circuit court judge.

28. How do you define "critical race theory?"

Response: I am not aware of any consensus definition of "critical race theory." Black's Law Dictionary defines the term as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." *Black's Law Dictionary* 382 (7th ed. 1999).

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: Please see my responses to Questions 27 and 28.

30. You served as Counsel of Record for an amicus brief on behalf of Virginia in *Our Lady of Guadalupe School v. Morrissey-Berru*. There, you asked the Court to rule against religious schools who were sued by their teachers for employment discrimination. Understanding that this question may implicate

confidentiality, please identify whether you (or someone else) decided to involve the state of Virginia in that litigation.

Response: The brief referenced above was filed in my role as Solicitor General of Virginia. The Attorney General decided that the Commonwealth of Virginia should file an amicus brief in that case.

31. In law school, you wrote an article arguing that the "explicit exclusion of religious schools from a private school voucher program would violate the Equal Protection Clause." Do you still agree with that conclusion?

Response: The quoted statement is from a paper that I wrote as a law student more than two decades ago and was published before the Supreme Court's subsequent decisions in *Zelman v. Simmons Harris*, 536 U.S. 649 (2002), *Locke v. Davey*, 540 U.S. 712 (2004), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020). If confirmed as a judge, it would be my obligation to decide any case that came before me under those precedents (as well as other relevant Supreme Court and Fourth Circuit precedent) rather than based on my own personal views.

32. Do you still believe that the Blaine Amendments—state constitutional provisions designed to exclude religious schools from state funding—violate the Equal Protection Clause?

Response: The argument referenced above is from a paper that I wrote as a law student more than two decades ago and was published before the Supreme Court's subsequent decisions in *Zelman v. Simmons Harris*, 536 U.S. 649 (2002), *Locke v. Davey*, 540 U.S. 712 (2004), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020). If confirmed as a judge, it would be my obligation to decide any case that came before me under those precedents (as well as other relevant Supreme Court and Fourth Circuit precedent) rather than based on my own personal views.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

   Response: There is no single label I would use to describe the approach I would take to judging. I believe that judges should carefully consider the arguments raised by the parties and reach the result dictated by the law and facts of each case, while treating all persons who come before them with dignity and respect.

2. **Would you describe yourself as an originalist?**

   Response: Please see my response to Question 1.

3. **Would you describe yourself as a textualist?**

   Response: Please see my response to Question 1.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I do not use the term "living" to describe the Constitution because that term has several definitions and is fraught for many. Instead, I agree with judges and previous judicial nominees who have described the Constitution as an enduring document whose mandates and principles continue to govern today and can be applied to new and novel circumstances.

5. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: Although I admire many past and current members of the Supreme Court, my admiration does not flow from their jurisprudence or how they may have voted in any particular case. I admire Justices Thurgood Marshall and Ruth Bader Ginsburg for their trailblazing work in advancing equality before they joined the bench, and, as an appellate advocate, I admire the craft they demonstrated in written and oral advocacy. I admire Justices Antonin Scalia and Elena Kagan for their writing ability. I also admire Justices John Paul Stevens and Samuel Alito for their skill in crafting incisive questions that cut to the heart of cases before them.

6. Was Marbury v. Madison correctly decided?
7. Was Lochner v. New York correctly decided?
8. Was Brown v. Board of Education correctly decided?
9. Was Bolling v. Sharpe correctly decided?
10. Was Cooper v. Aaron correctly decided?
11. Was Mapp v. Ohio correctly decided?
12. Was Gideon v. Wainwright correctly decided?
13. Was Griswold v. Connecticut correctly decided?
14. Was South Carolina v. Katzenbach correctly decided?
15. Was Miranda v. Arizona correctly decided?
16. Was Katzenbach v. Morgan correctly decided?
17. Was Loving v. Virginia correctly decided?
18. Was Katz v. United States correctly decided?
19. Was Roe v. Wade correctly decided?
20. Was Romer v. Evans correctly decided?
21. Was United States v. Virginia correctly decided?
22. Was Bush v. Gore correctly decided?
23. Was District of Columbia v. Heller correctly decided?
24. Was Crawford v. Marion County Election Bord correctly decided?
25. Was Boumediene v. Bush correctly decided?
26. Was Citizens United v. Federal Election Commission correctly decided?
27. Was Shelby County v. Holder correctly decided?
28. Was United States v. Windsor correctly decided?
29. Was Obergefell v. Hodges correctly decided?

Responses to Questions 6-29: As a nominee who is already bound by the Code of Conduct for United States Judges, I think it would almost invariably be inappropriate for me to express a personal opinion—positive or negative—about Supreme Court decisions that I would be bound to follow were I confirmed as a circuit judge. Consistent with the practice of past nominees, however, I believe that *Marbury v. Madison, Brown v. Board of Education* (including *Bolling v. Sharpe*), and *Loving v. Virginia* are rare exceptions that I may affirm I believe were correctly decided.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: A panel of the Fourth Circuit "cannot overrule a decision issued by another panel." *McMellon v. United States*, 387 F.3d 329, 332 (4th Cir. 2004) (en banc). Under Federal Rules of Appellate Procedure 35, the Court will sit banc panels when a majority of the circuit judges who are in regular active service and who are not disqualified conclude that: "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my response to Question 30.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No.

Questions from Senator Thom Tillis
for Toby Jay Heytens
Nominee to be United States Circuit Judge for the Fourth Circuit

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Although definitions of judicial activism may vary, I understand it to include situations where judges decide a case based on their personal views rather than what the law requires or go beyond the case before them to reach issues that are not properly presented. Neither type of judicial activism is appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe that impartiality is an obligation for all judges.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A judge who is faithfully interpreting the law will sometimes reach a result that is, in the judge's personal opinion, an undesirable outcome. In all cases, the judge's duty is to set aside any personal views and faithfully interpret and apply the law.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: The Supreme Court has held that the Second Amendment confers "an individual right to keep and bear arms," *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), and that that right is incorporated against the States via the Fourteenth Amendment, *see McDonald v. City of Chicago,* 561 U.S. 742 (2010). If confirmed, I will faithfully follow those and other precedents interpreting the Second Amendment.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: The values and ideals of the Constitution matter most in times of crisis. If I were confirmed and such a case came before me, I would begin by reviewing the arguments of the parties and researching Supreme Court and Fourth Circuit precedent. I would then apply the law to the specific facts and record of the case before me.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: There is significant Supreme Court and Fourth Circuit precedent on qualified immunity, and, if confirmed, I would analyze and apply that precedent in resolving cases that came before me that raised qualified immunity issues. Supreme Court precedent makes clear that officers are entitled to qualified immunity unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of the conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a judicial nominee, I do not believe it would be appropriate for me to offer a personal opinion about whether current doctrine provides "sufficient" protection for law enforcement officers. The Supreme Court has held that law enforcement officers are entitled to qualified immunity unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of the conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent about the scope of qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: As a judicial nominee, I do not believe it would be appropriate for me to offer a personal opinion about the "proper scope" of qualified immunity protection for law enforcement officers. The Supreme Court has held that law enforcement officers are entitled to qualified immunity unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of the conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent about the scope

of qualified immunity.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Michael Nachmanoff
Judicial Nominee to the U.S. District Court for the Eastern District of Virginia

1. **During your hearing you seemed to say that you think the best criminal defense lawyers have prosecutorial experience and vice versa. Please tell me more about why a diversity of legal experiences can make someone a better lawyer.**

   Response: Many of the attorneys I most admire served as both prosecutors and defense attorneys. They served in government and worked in private practice, and most had extensive experience as civil litigators. This diversity of experience helped them develop their skills as trial lawyers and provided them with insight into how to prepare for trial, investigate cases, and communicate effectively with clients, law enforcement agents, and opposing counsel. I learned an extraordinary amount from these attorneys, and I modeled my own career on their experience.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: I am not familiar with the term "super precedent." If confirmed as a District Judge, I would be bound by all precedents of the United States Supreme Court and the Fourth Circuit.

3. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: Throughout my legal career in private practice, as a federal defender, and as a Magistrate Judge, I have never been involved in a case in which a law firm participated in the prosecution of a criminal matter on a pro bono basis. During my tenure in private practice, I prosecuted cases on behalf of the Town of Herndon on a retained basis.

4. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not aware of this quote or the context in which it was made. I believe that the United States Constitution is an enduring document that has protected our liberties since its founding and that it provides the bedrock principles upon which our government is based. If I am fortunate enough to be confirmed as a District Judge, I will faithfully interpret the Constitution as directed by the binding precedents of the Supreme Court and Fourth Circuit.

5. **Should a judge yield to social pressure when deciding the outcome of cases?**

   Response: No. A judge must decide every case based on the faithful application of the law to the specific facts of the case without regard to the outcome.

6. **Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

   Response: I have not encountered this issue in private practice, as a federal defender, or as a Magistrate Judge. I do not have an opinion regarding when, if ever, private parties could prosecute federal criminal cases.

7. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

   Response: During the six years I have served as a United States Magistrate Judge, I have hired judicial law clerks based upon their intellect, judgment, and character. I consider many factors when evaluating candidates, including their academic accomplishments, recommendations, and writing samples. Membership in an organization is not a factor that would lead me to hire or not hire an otherwise qualified candidate. If confirmed, I would continue to follow the same hiring practices I have used as a Magistrate Judge.

8. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

   Response: I have not encountered this issue in private practice, as a federal defender, or as a Magistrate Judge. I do not have an opinion regarding how law firms should address potential conflicts between clients.

9. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: I have not encountered this issue in private practice, as a federal defender, or as a Magistrate Judge. I do not have an opinion regarding how law firms should address efforts by paying clients to influence their decisions regarding pro bono representation of other clients.

10. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

    Response: No.

11. **Should judicial decisions take into consideration principles of social "equity"?**

    Response: Judicial decisions must be based solely on the specific facts and applicable law of the case or controversy to be resolved. As a Magistrate Judge for the past six years, I have endeavored to faithfully provide equal justice under law in every case over which I preside consistent with my obligations under the Constitution.

12. **Is climate change real?**

Response: Issues related to climate change are the subject of considerable discussion and litigation. As a sitting Magistrate Judge and nominee, it would be inappropriate for me to comment on issues that are being actively litigated or could come before me. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court."). If fortunate enough to be confirmed as a District Judge, and the issue of climate change came before me, I would faithfully apply the law to the facts of the specific case and follow all binding Supreme Court and Fourth Circuit precedent.

13. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

Response: Please see my response to Question No. 10.

14. **Do you agree with the proposition that some clients do not deserve representation on account of their:**

    a. **Heinous crimes?**
    b. **Political beliefs?**
    c. **Religious beliefs?**

    Response: No.

15. **Should judicial decisions take into consideration principles of social "equity"?**

Response: Please see my response to Question No. 11.

16. **Do you believe that we should defund police departments? Please explain.**

Response: The separation of powers requires judges to interpret the law in the context of specific cases or controversies that come before the courts. Policy decisions regarding funding government programs or institutions, whether they involve police departments or other government services, are the responsibility of the legislative branch. Accordingly, it would not be appropriate for me as a sitting Magistrate Judge and nominee to opine on such policy issues. If fortunate enough to be confirmed as a District Judge, I would carefully review the specific facts of any case involving governmental funding decisions and faithfully apply the law following the binding precedents of the Supreme Court and the Fourth Circuit.

17. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

Response: Please see my response to Question No. 16.

18. **Do you believe that the federal government should reallocate funds away from the Department of Justice, specifically, U.S. Attorney's Offices, to provide greater support to the Federal Public Defenders?**

Response: Please see my response to Question No. 16.

19. **Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?**

Response: The separation of powers requires judges to interpret the law in the context of specific cases or controversies that come before the courts. Policy decisions regarding how the government should respond to domestic violence calls are the responsibility of the legislative branch. Accordingly, it would not be appropriate for me as a sitting Magistrate Judge and nominee to opine on such policy issues. If fortunate enough to be confirmed as a District Judge, I would carefully review the specific facts of any case involving the response to a domestic violence call and faithfully apply the law following the binding precedents of the Supreme Court and the Fourth Circuit.

20. **Do you believe legal gun purchases have caused the violent crime spike?**

Response: I am not familiar with any research or studies on this topic. If fortunate enough to be confirmed as a District Judge, I would carefully review the specific facts of any case involving gun purchases and crimes rates and faithfully apply the law following the binding precedents of the Supreme Court and the Fourth Circuit.

21. **Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?**

Response: I am not familiar with any research or studies on this topic. If fortunate enough to be confirmed as a District Judge, I would carefully review the specific facts of any case involving gun dealers and faithfully apply the law following the binding precedents of the Supreme Court and the Fourth Circuit.

22. **Is threatening Supreme Court Justices right or wrong?**

Response: Threatening a Supreme Court Justice or any judicial official is wrong. It undermines the rule of law and interferes with the fair and impartial administration of justice.

23. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: There is substantial case law that addresses when speech crosses the line from "mere criticism" to an "attack," which would constitute the criminal offense of threats. Such a determination would depend on the specific language used and the context in which the views were expressed and transmitted.

24. **Do you think the Supreme Court should be expanded?**

Response: As a sitting Magistrate Judge and nominee, it would be improper for me to comment on whether the Supreme Court should be expanded, which is a policy question for the legislative branch of government. This topic is currently the subject of extensive debate and discussion, and it would be inappropriate for me to opine on it.

25. **Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: The factors set forth in 18 U.S.C. § 3553(a) provide the guidance courts must follow in imposing sentences. The "nature and circumstances of the offense and the history and characteristics of the defendant" are among the factors to be considered in determining an appropriate sentence. *See* 18 U.S.C. § 3553(a)(1). However, a defendant's race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S. Sent'g Guidelines Manual § 5H1.10 (policy statement) (2018).

26. **Is the federal judicial system systemically racist? Please explain.**

    a. **If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?**

    Response: As a sitting Magistrate Judge, I have not been asked to determine whether the federal judicial system as a whole is "systemically racist." I decide matters on a case-by-case basis, including cases involving allegations of discrimination by specific individuals. For the past six years, I have endeavored to treat every litigant who appears before me fairly and provide equal justice under law to all. If fortunate enough to be confirmed as a District Judge, I would continue to do the same.

27. **Is the federal judiciary affected by implicit bias?**

Response: I am generally familiar with the term "implicit bias," but I have not seen that term applied to the federal judiciary as a whole. As I understand it, implicit bias refers to the concept that all people have subconscious views or attitudes about others of which they may be unaware. As a sitting Magistrate Judge, I have endeavored to treat every litigant fairly and impartially. If fortunate enough to be confirmed as a District Judge, I would continue to do the same.

28. **Is the Eastern District of Virginia impacted by implicit bias?**

Response: Please see my response to Question No. 27.

29. **What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?**

Response: The Bail Reform Act sets forth the factors to be considered in granting bail. *See* 18 U.S.C. § 3142(g). Those factors include, but are not limited to, the nature and characteristics of the offense charged and the history and characteristics of the defendant.

30. **If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: It is my understanding that the circumstances under which a District Judge can appoint an amicus to continue the prosecution of a matter the government has sought to dismiss is currently being litigated. Accordingly, as a sitting Magistrate Judge and nominee, it would be inappropriate for me to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

31. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: The standard to be applied in evaluating Second Amendment challenges is either strict scrutiny or intermediate scrutiny. *See Rogers v. Grewal*, 140 S. Ct. 1865, 1868 (2020) (Thomas, J., dissenting) (noting variety of approaches used by Circuit Courts after *District of Columbia v. Heller*, 554 U.S. 570 (2008)). The Fourth Circuit has addressed this issue in *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2010) ("[A]s has been the experience under the First Amendment, we might expect that courts will employ different types of scrutiny in assessing burdens on Second Amendment rights, depending on the character of the Second Amendment question presented. Under such an approach, we would take into account the nature of a person's Second Amendment interest, the extent to which those interests are burdened by government regulation, and the strength of the government's justifications for the regulation."). *See also United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). If fortunate enough to be confirmed as a District Judge, I would apply applicable Supreme Court and Fourth Circuit precedents to determine the proper level of scrutiny in any Second Amendment case.

32. **What is implicit bias?**

Response: Please see my response to Question No. 27.

33. **Do you have any implicit biases? If so, what are they?**

Response: Please see my response to Question No. 27.

34. **In your career as a public defender, did you ever encounter a defendant who sought to withdraw his guilty plea? Please provide an approximation of the number.**

    a. **In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation.**

    Response: I cannot recall any specific instances in which one of my clients sought to withdraw his guilty plea, but I represented hundreds of clients so it is possible that a small number may have attempted to do so. I am unaware of any cases in which a judge refused to accept a motion to dismiss with prejudice filed by the government.

35. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

    Response: The scope of injunctive relief remains an open question under federal law. As a general matter, injunctive relief must be narrowly tailored to provide relief to the specific parties before the court. Because this question is presently pending before the courts, it would be inappropriate for me, as a sitting Magistrate Judge and nominee, to comment further on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court."). If fortunate enough to be confirmed as a District Judge, I would faithfully apply all binding Supreme Court and Fourth Circuit precedents with regard to the scope of injunctive relief.

36. **In an interview for The Rocket Docket News in March 2015 shortly after you took the bench as a magistrate judge, you stated that the "advice that is resonating most with me right now is to always be mindful that judges are no longer advocates. That means that, a lot of the time, they should be quiet and let the lawyers talk."**

    a. **Do you believe this advice still holds true for District Judges?**

    Response: Yes.

    b. **Do you intend to follow this advice, if confirmed, as a District Judge?**

    Response: Yes.

37. **In a speech delivered in February 2018 to Rotary Club members, you stated that: one of the most comforting aspects of my job has been the knowledge that whatever errors I may make (and I have definitely made a couple here and there), there are at least three levels of appellate review available to the parties –**

district judges, circuit court judges and the Supreme Court Justices – to review my decision and fix my mistakes, if necessary. I suppose that could be a source of anxiety for some – after all no one likes to be judged, much less told they were wrong (and I will let you in on a little secret – judges are no different – they don't like to be reversed) – but for me, I view it as a safety net: a way to help avoid a potential injustice.

a. **If confirmed, will you still take "comfort" that the Fourth Circuit exists as a "safety net"?**

Response: If I am fortunate enough to be confirmed as a District Judge, I will faithfully apply the applicable law to the facts in every case that comes before me in an effort to reach the correct decision as required by the binding precedents of the Supreme Court and the Fourth Circuit.

38. **In a speech delivered at a Naturalization Ceremony, you noted that it was your "view that one of the greatest strengths of our nation is its ability to welcome hard working people from all over the world who want to contribute to our communities and make better lives for themselves and their families." Do you believe that immigrants who cross the border illegally should receive citizenship benefits before those who apply and follow the immigration and citizenship process as set forth by law?**

Response: It has been one of the greatest privileges of my service as a Magistrate Judge to preside over naturalization ceremonies. As the grandson of immigrants, I am a beneficiary of this country's long history of welcoming new citizens, and I will be forever grateful that my grandparents were given that opportunity. Immigration policy is the responsibility of the legislative and executive branches of government. If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including statutes related to immigration, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents.

39. **Do you believe the Armed Career Criminal Act (ACCA) should be abolished?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including the Armed Career Criminal Act ("ACCA"), as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents. Whether any statute should be abolished or modified is a policy question that falls squarely within the purview of the legislative branch.

40. **If you do not believe ACCA should be abolished, do you believe that ACCA should be altered? If so, what specifically would you like to see changed?**

Response: Please see my response to Question No. 39.

41. **Do you believe mandatory minimums should be abolished? Why or why not?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including mandatory minimums, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedent. Whether any statute or category of statutes should be abolished or modified is a policy question that falls squarely within the purview of the legislative branch. As a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If confirmed, I will continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

42. **If confirmed to the District Court, will you enforce sentences of mandatory minimums for defendants who qualify for ACCA?**

Response: Yes.

43. **You have noted the "negative racial impact of mandatory minimums" in public testimony before the U.S. Sentencing Commission. Given that, if confirmed, how will you feel comfortable sentencing defendants who qualify for mandatory minimum sentences?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including mandatory minimums, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents. As a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If confirmed, I will continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

44. **Do you believe that the federal government should abolish mandatory minimums for all drug crimes?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including mandatory minimums for drug crimes, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents. Whether any statute or category of statutes should be abolished or modified is a policy question that falls squarely within the purview of the legislative branch. As a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If confirmed, I will continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

45. **Do you believe that the federal government should decriminalize possession of all drugs?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including all drug offenses, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents. Whether possession of drugs should be decriminalized is a policy question that falls squarely within the purview of the legislative branch.

46. **Do you believe the federal government should expand the use of the safety valve? What alterations do you believe should be adopted?**

Response: If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including the safety valve, as written by Congress, and implemented by the United States Sentencing Commission, and I will follow all binding Supreme Court and Fourth Circuit precedents. Whether the safety valve should be expanded or altered is a policy question that falls squarely within the purview of the legislative branch. As a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If confirmed, I will continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

47. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: Please see my response to Question No. 31.

48. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

Response: The decision whether to pursue or abandon a particular prosecution or seek a specific punishment in a case is a decision solely for the executive branch.

49. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

Response: No. A judge must apply the law as written without regard to personal views.

50. **Do you believe potential voter fraud or other election abnormalities are concerns that the Justice Department should take seriously?**

Response: The executive branch is responsible for setting its investigatory and prosecutorial priorities. As a sitting Magistrate Judge and nominee, it would not be appropriate for me to opine as to the weight the Department of Justice should give to any specific enforcement priority, including voter fraud or election abnormalities. If fortunate enough to be confirmed as a District Judge, I will apply all federal statutes, including those related to election law and voter fraud, as written by Congress, and follow all binding Supreme Court and Fourth Circuit precedents.

51. **Do Blaine Amendments violate the Constitution?**

Response: The Supreme Court ruled in *Espinoza v. Montana*, 140 S. Ct. 2246 (2020), that if a state decides to subsidize private education, it cannot disqualify some private schools solely because they are religious. As a Magistrate Judge and nominee, it would not be appropriate for me to comment on issues which could possibly come before the court. If I am fortunate enough to be confirmed, I would be bound by all applicable Supreme Court and Fourth Circuit precedents regarding limits on the government's ability to restrict funding of religious institutions.

52. **Do parents have a constitutional right to direct the education of their children?**

Response: Yes. The Supreme Court has recognized a parent's right to direct the education and upbringing of one's children. *See Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

53. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On December 18, 2020, I submitted an application to Senators Mark Warner and Tim Kaine for the open District Judge position in the Alexandria Division of the United States District Court for the Eastern District of Virginia. I also submitted an application to the Virginia State Bar. The Virginia State Bar and several other bar associations then conducted evaluations of all judicial candidates and provided their ratings to the Senators. On March 18, 2021, I interviewed with the Senators' Committee. Based upon the Committee's recommendation, I was interviewed by Senators Warner and Kaine on April 12, 2021. On April 30, 2021, I interviewed with attorneys from the White House Counsel's Office. On June 30, 2021, the President announced his intention to nominate me.

54. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?**

    a. **Did anyone do so on your behalf?**

    Response: I spoke with Chris Kang on two occasions after I submitted my application for the District Judge position in the Eastern District of Virginia**.** He provided me with information on the nominations process based on his past experience in the White House.

55. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?**

a. **Did anyone do so on your behalf?**

Response: No.

56. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

a. **Did anyone do so on your behalf?**

Response: No.

57. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?**

a. **Did anyone do so on your behalf?**

Response: No.

58. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: I interviewed with the White House Counsel's Office on April 30, 2021. Since that time, I have had periodic communications with White House Counsel's Office and the Office of Legal Policy at the Department of Justice in connection with my nomination.

59. **Please explain, with particularity, the process whereby you answered these questions.**

Response: On August 4, 2021, I received a copy of these questions from the Office of Legal Policy at the Department of Justice. I reviewed the questions, conducted legal research, and drafted responses, which I shared with the Office of Legal Policy. After reviewing feedback from the Office of Legal Policy, I submitted these responses to the Senate Judiciary Committee.

Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
Michael Nachmanoff, Nominee to be U.S. District Judge for the Eastern District of Virginia

1. **In 2009, you co-authored an article in which you argued that the policy of imposing mandatory minimums "[i]nevitably results in disproportionately harsh punishments and unwarranted disparity." One of the reasons you gave was that mandatory minimums transfer the sentencing function from neutral judges to prosecutors. Can you explain what you mean?**

   Response: In 2009, as an advocate and then-Chair of the Legislative Committee for the federal defender community, I made arguments on behalf of specific clients and the federal defender community as a whole with respect to mandatory minimum sentences. The points I made at the time were simply that mandatory minimums place additional responsibility in the hands of prosecutors who determine which crimes to charge defendants with, including crimes that carry mandatory minimum sentences. Judges are then bound to apply those mandatory minimums if defendants are convicted or plead guilty. However, as a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If fortunate enough to be confirmed as a District Judge, I would continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

2. **In 2012 when you testified before the U.S. Sentencing Commission, you criticized advisory sentencing guidelines because "district judges now have absolute sentencing power." Could you elaborate on your criticism?**

   Response: Upon review of the transcript of the U.S. Sentencing Commission's Public Hearing (February 16, 2012), it appears that the quote above was made by Professor Frank Bowman but mistakenly attributed to me. I cannot elaborate further on why he made that statement.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Michael Stefan Nachmanoff, nominee to theUnited States District Court for the Eastern District of Virginia

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previouslyprovided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for thatdisagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **In December 2009, you authored an article with Amy Baron-Evans titled "Booker Five Years out: Mandatory Minimum Sentences and Department of Justice Charging Policies Continue to Distort Federal Sentencing Process," where you argued that the mandatory minimums "in both principle andpractice, inevitably results in disproportionately harsh punishments and unwarranted disparity." You have also argued that mandatory minimums have an adverse impact on racial minorities, that their use correlates with race, and that they directly and indirectly cause prison overcrowding. Are mandatory minimums part of systemic racism?**

   Response: In 2009, as an advocate and then-Chair of the Legislative Committee for the federal defender community, I made arguments on behalf of specific clients and the federal defender community as a whole with respect to mandatory minimum sentences. However, as a Magistrate Judge for the past six years, I have faithfully applied the sentencing statute, 18 U.S.C. § 3553(a), the Sentencing Guidelines, and mandatory minimums in Assimilated Crimes Act cases as required by the law. If fortunate enough to be confirmed as a District Judge, I would continue to impose sentences consistent with all applicable mandatory minimums and the sentencing statute.

2. **Is the ability to own a firearm a personal civil right?**

   Response: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment guarantees the right of individuals to keep and bear arms.

3. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

   Response: No.

Questions for the Record for Michael Nachmanoff
From Senator Mazie K. 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?

   Response: No.

   b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

   Response: No.

Senator Mike Lee Questions
for the Record
Michael Nachmanoff, E.D. Va.

1. **How would you describe your judicial philosophy?**

Response: I currently serve as a United States Magistrate Judge in the United States District Court for the Eastern District of Virginia, and if fortunate enough to be confirmed, I will continue serve in the Eastern District as a United States District Judge. For the past six years, I have endeavored to be fair and impartial in every case that comes before me and to treat all litigants with respect. I work hard to be well prepared, listen carefully to the arguments presented, and keep an open mind as I faithfully apply the law to the facts of each case. Finally, I render opinions and rulings from the bench and in writing promptly in language that is clear and accessible to the parties and to the public.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: I would start with the text of the statute. If the text of the statute is clear and unambiguous, no further interpretation is needed. If the text is ambiguous, I would consider Supreme Court and Fourth Circuit precedents interpreting the statute. If no binding precedent directly on point is available, I would consult related or analogous precedents from the Supreme Court or Fourth Circuit or persuasive precedent from other Circuits. In the rare circumstance where the text and relevant case law do not provide sufficient guidance, I would look to other reliable and accepted sources authorized by the Supreme Court and the Fourth Circuit for interpretation of the statute. If I am fortunate enough to be confirmed as a District Judge, I would be obliged to follow the precedents of the Supreme Court and Fourth Circuit and the methods of analysis set forth therein with regard to the interpretation of any federal statute.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I would start with the text of the constitutional provision. If the text is clear and unambiguous, no further interpretation is needed. If the text is ambiguous, I would consider Supreme Court and Fourth Circuit precedents interpreting the provision. If no binding precedent directly on point is available, I would consult related or analogous precedents from the Supreme Court or Fourth Circuit or persuasive precedent from other Circuits. In the rare circumstance where the text and relevant case law do not provide sufficient guidance, I would look to other reliable and accepted sources authorized by the Supreme Court and the Fourth Circuit for interpretation of the provision. If I am fortunate enough to be confirmed as a District Judge, I would be obliged to follow the precedents of the Supreme Court and Fourth Circuit and the methods of analysis set forth therein with regard to any constitutional provision.

4. **What role do the text and original meaning of a constitutional provision play**

when interpreting the Constitution?

Response: The text controls when interpreting the Constitution. In some cases, the Supreme Court has relied on the original public meaning of a particular constitutional provision. If confirmed, I would consider whether the Supreme Court and Fourth Circuit precedents relied on the original public meaning with regard to the specific provision to be interpreted and follow applicable Supreme Court and Fourth Circuit precedent.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: Please see my response to Question No. 2.

a. **Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: I understand "plain meaning" to be the meaning of the statute or constitutional provision at the time it was enacted.

6. **What are the constitutional requirements for standing?**

Response: The Supreme Court has set forth the constitutional requirements for standing in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), and *California v. Texas,* 141 S. Ct. 2104 (2021). Plaintiff must be able to establish (1) an injury in fact that is not conjectural or hypothetical, (2) that is traceable to the conduct of the defendant, and (3) is likely to be redressed by a favorable judicial decision. *Lujan*, 504 U.S. at 560-61.

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: The Supreme Court recognized, in *McCulloch v. Maryland*, 17 U.S. 316 (1819), that Congress has certain implied powers beyond those expressly enumerated in the Constitution through the Necessary and Proper Clause. In *McCulloch*, the Supreme Court found that Congress had the power to establish a national bank although it was not specifically enumerated in the text of the Constitution.

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: In any case involving constitutional issues, I would apply Supreme Court and Fourth Circuit precedents to determine the constitutionality of the law. To the extent Congress relied on an unenumerated power, I would evaluate whether it has been recognized by the Supreme Court to determine its validity.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court set forth a list of cases in which the Court found substantive due process rights which are not expressly enumerated in the Constitution, including: the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy and use of contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). *Id.* at 720; *see also Saenz v. Roe*, 526 U.S. 489 (1999) (recognizing a right to travel); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (recognizing a right of same-sex couples to marry). The Supreme Court has also "assumed, and strongly suggested" that there is a "right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. at 720.

10. **What rights are protected under substantive due process?**

Response: Please see my response to Question No. 9.

11. **If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: The rights set forth in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) do not reflect any personal beliefs on my part but rather the binding precedent of the Supreme Court. To the extent economic rights are not protected by "substantive due process" that is a decision that rests with the Supreme Court. If I am fortunate enough to be confirmed as a District judge, I will follow all binding precedents of the Supreme Court and the Fourth Circuit in evaluating what rights are protected under "substantive due process."

12. **What are the limits on Congress's power under the Commerce Clause?**

Response: Congress may regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce, and activity that substantially affects interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. **What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: The application of strict scrutiny review for a particular group as a "suspect class" is triggered by classifications based on race, religion, national origin, or alienage. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: The separation of powers is one of the most important features of our constitutional framework. The role of the judicial branch is limited to interpreting the law when faced with a specific case or controversy. Congress is charged with making the law, and the executive branch is responsible for enforcing it. This system of checks and balances prevents power from accumulating in one branch and allows the three separate branches of government to serve as a vital check on the power of the others. The elegance and enduring power of this structure is reflected in its longevity and resilience.

15. **How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: I would start with the text of the Constitution to determine the parameters of the authority assumed by the branch of government at issue. I would then apply applicable Supreme Court and Fourth Circuit precedents regarding the scope of the claimed executive or legislative power to resolve the specific issue in controversy.

16. **What role should empathy play in a judge's consideration of a case?**

Response: Judges must decide cases based solely upon the facts and the applicable law. In determining the appropriate resolution and making sure that litigants have an opportunity to be heard, it is essential that judges be respectful and open minded. This requires preparation, patience, humility, and thoughtfulness. As a Magistrate Judge, I have endeavored to make decisions by applying the law to the facts of the case before me, and then rendering my decisions promptly in language that is easily accessible to the parties and to the public.

17. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both errors undermine confidence in our judicial system.

18. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I am not familiar with the changes in the frequency with which the Supreme Court invalidates federal statutes and do not have an opinion as to why the frequency has changed since the founding of our country.

19. **How would you explain the difference between judicial review and judicial**

supremacy?

Response: It is my understanding that judicial review refers to the authority of the judicial branch to determine the constitutionality of actions taken by the legislative and executive branches. Judicial supremacy refers to the concept that the Supreme Court is the final arbiter of the meaning of the Constitution.

20. **Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: I cannot comment on how elected officials from an independent branch of government should resolve conflicts that arise in the discharge of their constitutional duties. As a judge, I am obligated to faithfully apply the law, follow binding precedent, and uphold the Constitution.

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: It is vitally important for judges to recognize the essential, but limited, role they play in our constitutional framework. Judges must decide cases based on the relevant facts and the applicable law. The legislature makes the law, and the executive enforces it. The separation of powers requires judges to follow precedent and decide only the case or controversy brought before them.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: The obligation of a district judge is to faithfully apply all relevant Supreme Court and Circuit Court precedent. To the extent a particular case raises legal issues that require the extension of precedent, the district judge must rule based on the specific facts and applicable law using recognized canons of construction.

23. **When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?**

Response: None. The factors to be considered at sentencing are set forth in 18 U.S.C. § 3553(a). The United States Sentencing Guidelines state that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10 (policy statement) (2018). As a Magistrate Judge, I have sentenced hundreds of defendants and faithfully applied the sentencing factors set forth in 18 U.S.C. § 3553(a) fairly and impartially without regard to the defendant's group identity or identities.

24. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you defineequity?**

Response: I am not familiar with the context of the Biden Administration's definition of equity referenced above.

25. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: Dictionary definitions of "equity" and "equality" explain that equality addresses treatment whereas equity addresses outcomes. In other words, equality requires fairness, but equity suggests that to achieve equal outcomes different resources or treatment may be needed by different people.

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The Fourteenth Amendment provides "equal protection of the laws."

27. **How do you define "systemic racism?"**

Response: I do not have a specific definition of "systemic racism." I understand the term to mean racism that affects an entire society, organization or institution rather than specific acts of racism perpetrated by an individual.

28. **How do you define "critical race theory?"**

Response: I do not have a specific definition of "critical race theory." It is my understanding that it is a term used in academic scholarship that involves the study of race and its relationship to legal and political institutions.

29. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: I do not purport to be knowledgeable with respect to these terms, but I would consider "critical race theory" to be an academic theory used in scholarly analysis, and I would consider "systemic racism" to be a term used to describe the discriminatory history of institutions or organizations.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

   Response: I currently serve as a United States Magistrate Judge in the United States District Court for the Eastern District of Virginia, and if fortunate enough to be confirmed, I will continue serve in the Eastern District as a United States District Judge. For the past six years, I have endeavored to be fair and impartial in every case that comes before me and to treat all litigants with respect. I work hard to be well prepared, to listen carefully to the arguments presented, and to keep an open mind as I faithfully apply the law to the facts of each case. Finally, I try my best to render opinions and rulings from the bench and in writing promptly in language that is clear and accessible to the parties and to the public.

2. **Would you describe yourself as an originalist?**

   Response: Please see my response to Question No. 1.

3. **Would you describe yourself as a textualist?**

   Response: Please see my response to Question No. 1.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I believe that the United States Constitution is an enduring document that has protected our liberties since its founding and that it provides the bedrock principles upon

which our government is based. If I am fortunate enough to be confirmed as a District Judge, I will faithfully interpret the Constitution as directed by the binding precedents of the Supreme Court and Fourth Circuit.

5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I have deep respect and admiration for the Supreme Court as an institution and for the members of the Supreme Court. It is difficult for me to single out specific justices for praise as I have always focused primarily on the reasoning in their holdings rather than their judicial philosophies.

6. Was Marbury v. Madison correctly decided?

Response: It is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. As a sitting Magistrate Judge and nominee, I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so widely accepted and unlikely to come before any court that they present an exception to this rule. Consistent with the responses of other nominees, I believe *Marbury v. Madison* was correctly decided.

7. Was Lochner v. New York correctly decided?

Response: As a sitting Magistrate Judge, I apply binding Supreme Court precedent without reservation, and if I am fortunate enough to be confirmed as a District Judge, I would continue to do so. As a Magistrate Judge and nominee, it is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided.

8. Was Brown v. Board of Education correctly decided?

Response: It is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. As a sitting Magistrate Judge and nominee, I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so widely accepted and unlikely to come before any court that they present an exception to this rule. Consistent with the responses of other nominees, I believe *Brown v. Board of Education* was correctly decided.

9. Was Bolling v. Sharpe correctly decided?

Response: It is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. As a sitting Magistrate Judge and nominee, I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so widely accepted and unlikely to come before any court that they present an exception to this rule. Consistent with my response to Question No. 8 regarding *Brown v. Board of Education*, I believe *Bolling v. Sharpe* was correctly decided.

10. Was Cooper v. Aaron correctly decided?

Response: Please see my response to Question No. 7.

11. Was Mapp v. Ohio correctly decided?

Response: Please see my response to Question No. 7.

12. Was Gideon v. Wainwright correctly decided?

Response: Please see my response to Question No. 7.

13. Was Griswold v. Connecticut correctly decided?

Response: Please see my response to Question No. 7.

14. Was South Carolina v. Katzenbach correctly decided?

Response: Please see my response to Question No. 7.

15. Was Miranda v. Arizona correctly decided?

Response: Please see my response to Question No. 7.

16. Was Katzenbach v. Morgan correctly decided?

Response: Please see my response to Question No. 7.

17. Was Loving v. Virginia correctly decided?

Response: It is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. As a sitting Magistrate Judge and nominee, I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so widely accepted and unlikely to come before any court that they present an exception to this rule. Consistent with the responses of other nominees, I believe *Loving v. Virginia* was correctly decided.

18. Was Katz v. United States correctly decided?

Response: Please see my response to Question No. 7.

19. Was Roe v. Wade correctly decided?

Response: Please see my response to Question No. 7.

20. Was Romer v. Evans correctly decided?

Response: Please see my response to Question No. 7.

21. Was United States v. Virginia correctly decided?

Response: Please see my response to Question No. 7.

22. Was Bush v. Gore correctly decided?

Response: Please see my response to Question No. 7.

23. Was District of Columbia v. Heller correctly decided?

Response: Please see my response to Question No. 7.

24. Was Crawford v. Marion County Election Bord correctly decided?

Response: Please see my response to Question No. 7.

25. Was Boumediene v. Bush correctly decided?

Response: Please see my response to Question No. 7.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: Please see my response to Question No. 7.

27. Was Shelby County v. Holder correctly decided?

Response: Please see my response to Question No. 7.

28. Was United States v. Windsor correctly decided?

Response: Please see my response to Question No. 7.

29. Was Obergefell v. Hodges correctly decided?

Response: Please see my response to Question No. 7.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: An appellate court can overturn its own precedent in rare circumstances through en banc proceedings. Federal Rule of Appellate Procedure 35 sets forth the circumstances under which en banc hearings can be held. If I am fortunate enough to be confirmed as a District Judge, I would not be in a position to consider whether Fourth

Circuit precedent should be reaffirmed or overturned but would be obliged to follow all binding precedents of the Supreme Court and Fourth Circuit.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my response to Question No. 30.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: The factors set forth in 18 U.S.C. § 3553(a) provide the guidance courts must follow in imposing sentences. Ordinarily, a defendant's race or ethnicity should play no role in sentencing a defendant. As the Sentencing Guidelines state, race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S. Sent'g Guidelines Manual § 5H1.10 (policy statement) (2018).

Questions from Senator Thom Tillis
for Michael Stefan Nachmanoff
Nominee to be United States District Judge for the Eastern District of Virginia

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes. A judge's personal views are irrelevant when it comes to interpreting and applying the law.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I understand judicial activism to be judicial decision-making that is based on the judge's personal views rather than the applicable law and facts of the case. Judges should never inject their personal views into the decision-making process. As a Magistrate Judge, I make decisions based solely on the applicable law and the facts of the case before me. If I am fortunate enough to be confirmed as a District Judge, I would continue to do the same.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is more than an "expectation" for a judge. Impartiality is one of the cornerstones of judicial independence and essential to the fair administration of justice.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No. A judge should never make any decision to reach a desired outcome, which would include second-guessing decisions by Congress or state legislative bodies. As a sitting Magistrate Judge, I have applied the applicable law to the facts in hundreds of cases without regard to the outcome. If fortunate enough to be confirmed as a District Judge, I would continue to do the same.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: As a Magistrate Judge, I have faithfully applied the applicable law to the facts in hundreds of cases without regard to the outcome. A judge's personal view of the desirability of a particular outcome is irrelevant to the decision-making process.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If confirmed, I will faithfully apply the Supreme Court's precedents interpreting the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). These decisions reflect that the individual right to possess firearms is protected by the Second Amendment, and that the right to keep and bear arms is fundamental.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: I would evaluate any case involving firearms or COVID-19 restrictions in accordance with the binding precedents of the Supreme Court and the Fourth Circuit, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020), and *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Because issues involving the constitutionality of firearms and religious-liberty restrictions are currently being litigated before the courts, it would be inappropriate for me to opine as to how such issues will ultimately be resolved. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: Under Supreme Court precedent, I would be required to consider the following: (1) "whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right," and (2) "whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (internal citations omitted); *see also Hicks v. Ferreyra*, 965 F.3d 302, 307 (4th Cir. 2020). Qualified immunity applies "when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019); *see Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (holding that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known").

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: It is the role of the legislative and executive branches of government to determine whether qualified immunity provides sufficient protection for law enforcement officers. As

a sitting Magistrate Judge, I am obligated to follow the binding precedents of the Supreme Court and Fourth Circuit. If I am fortunate enough to be confirmed as District Judge, I would apply those same precedents to any cases involving claims of qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: It is the role of the legislative and executive branches of government to determine the proper scope of qualified immunity protections for law enforcement. Moreover, issues involving the scope of qualified immunity protections remain an open question before the courts, and it would be inappropriate for me to opine as to how such issues will ultimately be resolved. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court."). As a sitting Magistrate Judge, I am obligated to follow the binding precedents of the Supreme Court and Fourth Circuit. If I am fortunate enough to be confirmed as District Judge, I will be bound those same precedents in any cases involving claims of qualified immunity.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: I have ruled on pretrial matters and mediated settlements in several complex patent cases as a Magistrate Judge, but I have not been required to rule on eligibility issues. *See, e.g., Plastipak Packaging, Inc. v. Niagara Bottling, LLC*, No. 1:17-cv-1463-AJT-MSN (E.D. Va.)(Patent infringement action involving multiple motions to compel, to strike expert testimony, and for issuance of letters rogatory). The Supreme Court set forth the test for patent eligibility in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). If fortunate enough to be confirmed as a District Judge, I would faithfully apply binding precedents from the Supreme Court and the Federal Circuit to evaluate the eligibility of patent claims.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: As a sitting Magistrate Judge and nominee, I cannot offer an advisory opinion indicating how I would rule in such a hypothetical case. Because the Eastern District of Virginia has a substantial patent docket, it would be inappropriate for me

to comment on this issue. If fortunate enough to be confirmed, I would faithfully apply all relevant Supreme Court and Federal Circuit precedent to evaluate the eligibility of patent claims. As I stated in response to Question No. 12, I have ruled on pretrial matters and mediated settlements in several complex patent cases as a Magistrate Judge, and I have followed all relevant Supreme Court and Federal Circuit precedent in those matters.

b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Please see my response to Question No. 13.a.

c. ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please see my response to Question No. 13.a.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question No. 13.a.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question No. 13.a.

f. **A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them**

through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: Please see my response to Question No. 13.a.

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should** ***BioTechCo*** **be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if** ***BioTech Co*** **invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see my response to Question No. 13.a.

h. Assuming ***BioTechCo's*** **diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question No. 13.a.

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question No. 13.a.

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should** ***Stoll Labs*** **be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question No. 13.a.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: I have ruled on pretrial matters and mediated settlements in several complex patent cases as a Magistrate Judge, but I have not been required to rule on eligibility issues. *See, e.g.*, *Plastipak Packaging, Inc. v. Niagara Bottling, LLC*, No. 1:17-cv-1463-AJT-MSN (E.D. Va.) (Patent infringement action involving multiple motions to compel, to strike expert testimony, and for issuance of letters rogatory). Accordingly, I have not formed an opinion regarding the current state of patent eligibility jurisprudence. If fortunate enough to be confirmed as a District Judge, I would faithfully apply binding precedents from the Supreme Court and the Federal Circuit to evaluate the eligibility of patent claims.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Sarala Nagala
Judicial Nominee to the U.S. District Court for the District of Connecticut

1. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: To my knowledge, neither the Supreme Court nor the Second Circuit has ever used the term "super precedent." If I am confirmed, I would faithfully apply all precedents of the Supreme Court and Second Circuit.

2. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

   Response: In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that police may stop and pat down someone to search for weapons if they have a reasonable suspicion of the person's involvement in criminal activity and that the person is armed and dangerous. *See also Arizona v. Johnson*, 555 U.S. 323 (2009); *United States v. Simmons*, 560 F.3d 98, 108 (2d Cir. 2009).

3. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: No. Prosecution of crimes is a function of the government.

4. **Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a "living constitution"?**

   Response: I am not familiar with Judge Jackson's remarks or the context in which they were made. If I am confirmed, I will faithfully apply Supreme Court and Second Circuit precedent in interpreting constitutional provisions.

5. **Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

   Response: No. Prosecution of crimes is a function of the government.

6. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

   Response: Yes.

7. Please provide a definition of "cultural competency."

Response: Although the phrase "cultural competency" may mean different things to different people, I generally use it to refer to an ability to understand and respect people from different cultural backgrounds than one's own.

8. What did you teach and tell the police about "cultural competency"?

Response: In the cultural competency police department trainings in which I have participated with members of the Muslim and Sikh communities, our goal was to connect police officers to members of the Muslim and Sikh communities in Connecticut and to educate those officers on aspects of those religions that they may encounter when interacting with members of those faiths. For instance, the Sikh presenters would demonstrate that the turbans many Sikhs wear as part of their faith are made up of a single piece of cloth that is typically many feet long, and that requires time and skill to tie; they are not as easy to put on and take off as a hat. At these trainings, I generally presented about federal hate crimes laws.

9. What is implicit bias?

Response: I am generally familiar with the term "implicit bias." I understand it to refer to attitudes or biases that persons hold unconsciously.

10. Do you have any implicit biases? If so, what are they?

Response: It is my understanding that we all hold implicit biases. Because they are held unconsciously, it is difficult to fully identify them.

11. Approximately how long have you worked with the Anti-Defamation League in leading a program for educators addressing anti-Muslim and anti-Sikh bias?

Response: To the best of my recollection, my involvement with the Anti-Defamation League in the program for educators addressing anti-Muslim and anti-Sikh bias was limited to a single event on January 28, 2016. I have worked with the Anti-Defamation League on other community engagement programs for several years.

12. What materials did you use to train educators regarding anti-Muslim and anti-Sikh bias in your partnership with the Anti-Defamation League?

Response: I do not have a copy of the materials I used at the January 28, 2016, event. To the best of my recollection, I spoke generally about federal civil rights and hate crimes laws.

13. What did you teach and train educators, in partnership with the Anti-Defamation League, regarding anti-Muslim and anti-Sikh bias?

Response: I do not have a copy of the materials I used at the January 28, 2016, event. To the best of my recollection, I spoke generally about federal civil rights and hate crimes laws.

14. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

Response: This is a decision to be made by an individual law firm.

15. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: No.

16. Do you agree with the proposition that some clients do not deserve representation on account of their:

a. Heinous crimes?

Response: No.

b. Political beliefs?

Response: No.

c. Religious beliefs?

Response: No.

17. Should judicial decisions take into consideration principles of social "equity"?

Response: Judicial decisions should be based on application of the relevant law to the facts of a specific case.

18. Do you believe that we should defund police departments? Please explain.

Response: The question of funding for police departments is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

19. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: The question of funding for police departments is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

20. Do you believe that the federal government should reallocate funds away from the Department of Justice, specifically, U.S. Attorney's Offices, to provide greater support to the Federal Public Defenders?

Response: The question of funding for United States Attorney's Offices and Federal Public Defenders is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

21. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: I am unable to answer this question without the benefit of further facts.

22. Do you believe legal gun purchases have caused the violent crime spike?

Response: I have not studied the effects, if any, that legal gun purchases have had on violent crime. If I am confirmed, I would faithfully follow precedents of the Supreme Court and Second Circuit on all issues, including the Second Amendment.

23. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

Response: I have not studied the impact, if any, that "rogue gun dealers" have on the number of crimes committed with firearms.

24. Is gun violence a public-health crisis?

Response: Early in my tenure as a junior associate at Munger, Tolles, & Olson LLP, I worked on an amicus brief in *McDonald v. City of Chicago*, 561 U.S. 742 (2010) on behalf of public health organizations, in which my firm's clients took the position that "gun violence is a major public health problem that must be addressed through multiple modalities, including legislation and regulation." The brief submitted empirical information "to aid the Court's analysis." The position expressed in the amicus brief was that of my law firm's clients; as an advocate, I was then and have always been duty-bound to zealously represent the interests of my clients. As a judicial nominee, however, it would be inappropriate for me to opine on this issue.

25. Is racism a public-health crisis?

Response: Whether racism is considered a public health crisis is a matter for policymakers. As a judicial nominee, it would be inappropriate for me to opine on this issue.

26. Is the federal judiciary affected by implicit bias?

Response: My understanding of implicit bias is that it is present in all persons.

27. Do you have implicit bias? How do you know if it's implicit?

Response: My understanding of implicit bias is that it is present in all persons.

a. If you answered yes, how does implicit bias impact you in your day to day role as a prosecutor, particularly as it pertains to your:

i. Recommendations regarding pre-trial detention?

Response: Based on my basic understanding of implicit bias, one of the better ways to counteract it is to be intentionally reflective and deliberative when making decisions. I have endeavored to do so in all decisions I have made as a prosecutor, including my recommendations regarding pre-trial detention.

ii. Recommendations regarding sentencing?

Response: Based on my basic understanding of implicit bias, one of the better ways to counteract it is to be intentionally reflective and deliberative when making decisions. I have endeavored to do so in all decisions I have made as a prosecutor, including my recommendations regarding sentencing.

28. You can answer the following questions yes or no:

a. Was *Brown v. Board of Education* correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided. However, there are a small number of constitutional decisions that are foundational to our system of justice and that present facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that they were correctly decided. *Brown v. Board of Education* is one of those decisions.

b. Was *Loving v. Virginia* correctly decided?

Response: Please see my response to Question 28a. I believe that *Loving v. Virginia*, like *Brown v. Board of Education*, is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

c. Was *Griswold v. Connecticut* correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided.

d. Was *Roe v. Wade* correctly decided?

Response: Please see my response to Question 28c.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: Please see my response to Question 28c.

f. Was *Gonzales v. Carhart* correctly decided?

Response: Please see my response to Question 28c.

g. Was *District of Columbia v. Heller* correctly decided?

Response: Please see my response to Question 28c.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: Please see my response to Question 28c.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: Please see my response to Question 28c.

j. Was *Sturgeon v. Frost* correctly decided?

Response: Please see my response to Question 28c.

k. Was *Juliana v. United States* (9th Cir.) correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a decision of the Ninth Circuit.

l. Was *Rust v. Sullivan* correctly decided?

Response: Please see my response to Question 28c.

29. Is threatening Supreme Court Justices right or wrong?

Response: Threatening Supreme Court Justices is wrong. Certain threats against judges are criminalized by 18 U.S.C. § 115.

30. Do you think the Supreme Court should be expanded?

Response: As a judicial nominee, it would be inappropriate for me to comment on the composition of the Supreme Court.

31. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: The answer to this question would depend on the specific factual circumstances, including the language used by speaker.

32. Does racism qualify as a public health emergency?

Response: Whether racism is considered a public health emergency is a matter for policymakers. As a judicial nominee, it would be inappropriate for me to opine on this issue.

33. Is climate change real?

Response: If confirmed, and if a case came before me that raised a question regarding the existence of climate change, I would carefully review the facts of the case and faithfully apply Supreme Court and Second Circuit precedents.

34. Is the federal judicial system systemically racist? Please explain.

Response: The term "systemically racist" is not a term defined under the law. I am aware of studies showing that certain policies have had different impacts on different demographic groups, and I am aware that Congress has considered and is considering

some of these issues. If confirmed, I will follow applicable federal precedents and strive to ensure that I am treating every litigant in my courtroom fairly.

a. If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?

Response: Please see my response to Question 34.

35. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?

Response: This is a question of policy; as a judicial nominee, it would be inappropriate for me to opine on this issue. If I am confirmed and presented with a case presenting a question of release of a prisoner during COVID-19, I would apply the relevant Supreme Court and Second Circuit precedents to analyze the issue.

36. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

Response: Under Federal Rule of Criminal Procedure 48(a), the government "may, with leave of court, dismiss an indictment, information, or complaint." Thus, the district court must consider the question of whether to grant the government leave to dismiss. I am unaware of any cases in the District of Connecticut in which an amicus has been appointed to continue a prosecution that the Department of Justice has sought to dismiss.

37. Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?

a. American Constitution Society

Response: None.

b. Arabella Advisors

Response: None.

c. Demand Justice

Response: None.

d. Fix the Court

Response: None.

e. Open Society Foundation

Response: None.

38. What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?

Response: The issuance of injunctions is governed by Federal Rule of Civil Procedure 65. I do not believe that the Supreme Court has decided the legal standard for issuance of a nationwide injunction. If I am confirmed and presented with a case in which a nationwide injunction may be contemplated, I would consider all relevant Supreme Court and Second Circuit precedents on this issue.

39. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: To my knowledge, the Supreme Court has not decided the question of what level of scrutiny applies to a Second Amendment challenge. Currently, in determining whether heightened scrutiny applies to a Second Amendment challenge, the Second Circuit considers two factors: (1) "how close the law comes to the core of the Second Amendment right" and (2) "the severity of the law's burden on the right." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 258 (2d Cir. 2015). If a law "neither implicate[s] the core protections of the Second Amendment nor substantially burden[s] their exercise," heightened scrutiny does not apply. *Id.* In *New York State Rifle*, the Second Circuit analyzed the regulations under an intermediate scrutiny standard.

40. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

Response: As a judicial nominee, it would be inappropriate for me to opine on President Biden's views on this issue. If confirmed as a district court judge, I can attest that I would impose punishments that are lawful under federal law in appropriate circumstances, including capital punishment.

41. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

Response: Yes.

42. In your career as a prosecutor, did you ever encounter a defendant who sought to withdraw his guilty plea? Please provide an approximation of the number.

Response: To the best of my recollection, only one defendant I have prosecuted sought to withdraw his guilty plea. He eventually withdrew his motion to withdraw his guilty plea.

a. In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation.

Response: I have never encountered this situation.

43. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: Under the Religious Freedom Restoration Act, codified 42 U.S.C. § 2000bb-1(c), "a person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." In *Holt v. Hobbs*, 574 U.S. at 358, 360-61 (2015), the Supreme Court held, in case brought under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), that the "petitioner bore the burden of proving" both that a government policy "implicate[d] his religious exercise" and that the government policy "substantially burdened his exercise of religion." The Supreme Court noted that RLUIPA allows for religious accommodations "pursuant to the same standard" as set forth in the Religious Freedom Restoration Act. *Id.* at 358. If the religious adherent makes that showing, the burden shifts to the government to show that policy is "in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." *Id.* at 362. *See also Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418 (2006).

b. How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?

Response: Under 42 U.S.C. § 2000b-1(b), "Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--(1) is in furtherance of a compelling governmental

interest; and (2) is the least restrictive means of furthering that compelling governmental interest." The Supreme Court has addressed what it means for the Government to "substantially burden" a person's exercise of religion in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding that the Department of Health and Human Services' contraception mandate at issue substantially burdened the exercise of religion) and *Holt v. Hobbs*, 574 U.S. at 358, 360-61 (2015) (holding, in a case involving the Religious Land Use and Institutionalized Persons Act, that a government policy preventing a prisoner from growing a short beard in accordance with his religious beliefs substantially burdened his exercise of religion). The Second Circuit has held that a substantial burden generally exists under the Religious Freedom Restoration Act when the state "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014), *quoting Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996). My personal views, if any, about this standard are irrelevant. If confirmed, and if presented with a case raising this issue, I will faithfully follow all Supreme Court and Second Circuit precedents in this area.

44. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: In *Bostock v. Clayton County,* 140 S. Ct. 1731 (2020), the Supreme Court stated: "We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." 140 S. Ct. at 1754. The Supreme Court also noted, however, that questions of "how these doctrines protecting religious liberty interact with Title VII are questions for future cases." *Id.* Because litigation about these matters may come before me if I am confirmed, it would be inappropriate for me to opine further.

45. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Supreme Court held that a state-based scholarship program that provides public funds for students to attend private schools cannot discriminate against religiously affiliated schools under the Free Exercise Clause of the Constitution. If confirmed, and if presented with a case on this issue, I will faithfully follow all Supreme Court and Second Circuit precedents in this area.

46. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

Response: Yes.

47. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: In February of 2021, I received an announcement soliciting applications for the vacancies on the United States District Court for the District of Connecticut. I submitted an application to a staff member of U.S. Senator Richard Blumenthal by the deadline of March 10, 2021. I understand that there was an Advisory Committee convened by Senators Blumenthal and Christopher Murphy to review the applications. I was not interviewed by the Committee, but I understand that my application was passed on to Senators Blumenthal and Murphy for a possible interview.

On March 31, 2021, I interviewed with Senators Blumenthal and Murphy and their aides. On April 9, 2021, I interviewed again with Senators Blumenthal and Murphy and their aides.

On April 18, 2021, I was contacted by the White House Counsel's Office for an interview, which took place on April 20, 2021. Since April 21, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 2, 2021, I participated in a follow-up conversation with the White House Counsel's Office. On June 15, 2021, my nomination was submitted to the United States Senate.

48. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

49. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: I am aware that, without any direction or request from me, a former colleague of mine discussed that I had applied for the district court vacancies with an individual or individuals associated with the Connecticut chapter of the American Constitution Society. I was not privy to that conversation or conversations.

50. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

51. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

52. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: Response: I was interviewed by attorneys from the White House Counsel's Office on April 20, 2021. I have been in contact with representatives of the White House Counsel's Office and the Office of Legal Policy since April 21, 2021.

53. Please explain, with particularity, the process whereby you answered these questions.

Response: I reviewed the questions and drafted my answers, conducting research where necessary. I provided my draft responses to the Department of Justice's Office of Legal Policy for review and feedback. After receiving feedback from the Office of Legal Policy, I revised and finalized my responses for submission.

Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
Sarala V. Nagala, Nominee to be U.S. District Judge for the District of Connecticut

1. **While you were an associate at Munger, Tolles, & Olsen LLP you wrote an amicus brief in *McDonald v. City of Chicago* (2010) advocating for the removal of handguns from American homes and the community. You also advocated that local lawmakers should seek to address gun ownership through gun-control legislation. What is your interpretation of the Second Amendment? Does it guarantee an individual right to gun ownership to law-abiding Americans?**

   Response: As I stated at my hearing, I was asked to work on that brief early in my tenure as a junior associate at Munger, Tolles, & Olson LLP. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller,* 554 U.S. 570, 595 (2008), in which the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms."

2. **How would you describe your interpretational approach to the Constitution? Would you describe yourself as an originalist?**

   Response: If I am confirmed as a district judge, I will faithfully follow all precedents of the United States Supreme Court and the United States Court of Appeals of the Second Circuit, including those that address the interpretation of constitutional provisions. Where those precedents interpret constitutional provisions based on the original meaning of the text, I would faithfully follow them if confirmed. *See, e.g., Heller v. United States*, 554 U.S. 570 (2008) (interpreting the Second Amendment). Where those precedents have instead interpreted constitutional provisions in a different manner, I would likewise faithfully follow them. *See, e.g., Trop v. Dulles*, 356 U.S. 86 (1958) (considering "evolving standards of decency" in interpreting the Eighth Amendment).

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Sarala Vidya Nagala, nominee to the United States District Court for the District of Connecticut

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **When you were an associate at Munger, Tolles, & Olsen LLP, you wrote an amicus brief in *McDonald v. City of Chicago*, in which you advocated for the removal of handguns from American homes and the community. You argued that this was necessary as a matter of "public health," since handguns pose a "particular threat to all Americans." Please explain whether the Supreme Court agreed or disagreed with this position.**

   Response: Early in my tenure as a junior associate at Munger, I worked on an amicus brief in the *McDonald* case on behalf of public health organizations. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. The brief argued that the Court did not need to reach "the question of whether the Second Amendment's substantive scope … encompasses and renders unconstitutional the ordinances at issue" because the decision below turned on a procedural ground. The brief further argued, however, that if the Court addressed the constitutionality of the ordinances at issue, "empirical information regarding the effect of firearms … on the public's health may bear on the constitutional question." In *McDonald*, the Supreme Court held that the Second Amendment applies to the states because it is incorporated through the Due Process Clause of the Fourteenth Amendment. If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller,* 554 U.S. 570 (2008) and *McDonald.*

2. **Please describe the holding of *McDonald v. City of Chicago*.**

   Response: In *McDonald*, the Supreme Court held that the Second Amendment applies to the states because it is incorporated through the Due Process Clause of the Fourteenth Amendment.

3. **What is the standard of review for a Second Amendment claim in the Second Circuit Court of Appeals? As part of your answer, please state the controllingprecedent, if any, in the Second Circuit.**

   Response: Neither *Heller* nor *McDonald* decided the question of what level of scrutiny applies to a Second Amendment challenge. Currently, in determining whether heightened scrutiny applies to a Second Amendment challenge, the Second Circuit considers two factors: (1) "how close the law comes to the core of the Second Amendment right" and (2) "the severity of the law's burden on the right." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 258 (2d Cir. 2015). If a law "neither implicate[s] the core protections of the Second Amendment nor substantially burden[s] their exercise," heightened scrutiny does not apply. *Id.* In *New York State Rifle*, the Second Circuit analyzed the regulations at issue under an intermediate scrutiny standard.

4. **What role does history play in analyzing a Second Amendment claim?**

   Response: In both *Heller* and *McDonald*, the Supreme Court relied heavily on historical analysis.

5. **Is the ability to own a firearm a personal civil right?**

Response: In *Heller*, the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). In *McDonald*, the Supreme Court further held that the individual right to keep and bear arms is a fundamental right that applies to the states as well as to the federal government. 561 U.S. 742, 750 (2010).

6. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: To my knowledge, neither the Supreme Court nor the Second Circuit have engaged in a comparison of the protections accorded the right to own a firearm and other individual rights enumerated in the Constitution.

7. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: To my knowledge, neither the Supreme Court nor the Second Circuit have engaged in a comparison of the protections accorded the right to own a firearm and the right to vote.

8. **Please describe a "*Jacobson* remand" in the Second Circuit, and explain how this process, under existing precedent, comports with jurisdictional requirements.**

Response: In *United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994), the Second Circuit remanded a case to the district court to supplement its record on a discrete issue related to the reasons for a particular criminal sentence, while retaining jurisdiction over the appeal. As the Second Circuit later noted, a *Jacobson* remand "eliminates any question as to the district court's jurisdiction" over the particular issue that is the subject of the remand and "enables [the Second Circuit] to provide, if appropriate, for the automatic restoration of appellate jurisdiction, without the need for a new notice of appeal." *United States v. Salameh*, 84 F.3d 47, 50 (2d Cir. 1996).

9. **When the Second Circuit issues a *Jacobson* remand, how is the jurisdiction of the district court limited?**

Response: When the Second Circuit issues a *Jacobson* remand, it generally seeks supplementation of the record on a discrete legal or factual issue.

Questions for the Record for Sarala Nagala
From Senator Mazie K. 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?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee Questions
for the Record
Sarala Nagala, District of CT

1. How would you describe your judicial philosophy?

Response: My approach to the work of a judge, if I am confirmed, would be to ensure that all parties have the ability to present their arguments to the court; to carefully develop the factual record as it pertains to the legal dispute; to analyze the relevant precedents and legal arguments raised by the parties; to fairly and impartially apply the appropriate legal standards to the factual record; to reach decisions expeditiously but thoughtfully; and to articulate those decisions in a clear manner.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: I would first look to the text of the statute and to Supreme Court and Second Circuit precedents that are directly on point. I would analyze the plain language and structure of the statute. If the statute's meaning remained unclear, I would then employ traditional canons of statutory construction. I would also look to precedents from the Supreme Court and Second Circuit that address analogous statutes or regulations, and then to persuasive, but non-binding, authority, while recognizing its non-binding nature. If none of these avenues resolved the ambiguity, I may look to legislative history, including particularly committee reports, to see if it sheds light on the meaning of the ambiguous text.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would first look to Supreme Court and Second Circuit precedents that are directly on point. I would also analyze the plain language, structure, and historical context of the constitutional provision, to attempt to determine the meaning of the text. I would then employ traditional canons of construction. Finally, I would look to precedents from the Supreme Court and Second Circuit that address analogous language in other provisions, and then to persuasive, but non-binding, authority, while recognizing its non-binding nature.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: If confirmed, I would follow Supreme Court and Second Circuit precedent about the role of text and the original meaning of the Constitution when interpreting the Constitution.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: The text is the starting point for interpretation of statutes.

a. **Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: If I am confirmed, I will faithfully follow all precedents of the United States Supreme Court and the United States Court of Appeals of the Second Circuit, including those that address the interpretation of constitutional provisions. Where those precedents interpret constitutional provisions based on the original public meaning of the text, I would faithfully follow them if confirmed. *See, e.g., Heller v. United States*, 554 U.S. 570 (2008) (interpreting the Second Amendment). Where those precedents have instead interpreted constitutional provisions in a different manner, I would likewise faithfully follow them. *See, e.g., Trop v. Dulles*, 356 U.S. 86 (1958) (considering "evolving standards of decency" in interpreting the Eighth Amendment).

6. What are the constitutional requirements for standing?

Response: The Supreme Court has identified a three-part test for establishing standing in federal court: (1)injury in fact; (2) causation; and (3) likelihood of redress. *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: The Supreme Court has held that Congress has implied powers under the Necessary and Proper Clause. *See, e.g., McCulloch v. Maryland,* 17 U.S. 316, 411-412 (1819). If confirmed, I would faithfully follow such precedent.

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would faithfully follow precedent from the Supreme Court and Second Circuit on this issue.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held that the Constitution protects various unenumerated rights. Two examples are the right to travel, *see Saenz v. Roe*, 526 U.S. 489 (1999), and the right to privacy, *see Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. What rights are protected under substantive due process?

Response: The liberty interest protected by the Due Process clause has been found to protect many different rights, including the right to marry, the right to parent, and the right to use contraception. See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967); *Meyer v.*

Nebraska, 262 U.S. 390 (1923); and *Griswold v. Connecticut*, 381 U.S. 479 (1965).

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: Any personal beliefs I may hold about the scope of substantive due process would not be relevant if I were confirmed. If confirmed as a district court judge, I will faithfully follow the precedent of the Supreme Court and the Second Circuit regarding what rights are protected by substantive due process.

12. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has recognized some limitations on Congress's Commerce Clause Power in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). The Supreme Court has held that Congress may only regulate three categories of activity pursuant to the Commerce Clause: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce" and activities that threaten such instrumentalities, persons or things, and (3) activities that "substantially affect interstate commerce[.]" *United States v. Lopez*, 514 U.S. at 558–59.

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has held that a suspect class is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *See San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Examples of suspect classifications are race, alienage, and national origin. *See, e.g., See, e.g., Massachusetts Bd. of Retirement v. Murgia,* 427 U.S. 307, 312 n.4 (1976); *Fisher v. University of Texas*, 136 S. Ct. 2198 (2016).

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: These features are critical to our constitutional structure. They were designed to prevent the concentration of power in any one branch of government and to help safeguard the liberties guaranteed under the Constitution. The judicial branch, like the other two branches, is limited in its power.

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would faithfully follow any precedents of the Supreme Court and Second Circuit if faced with an issue of this nature.

16. What role should empathy play in a judge's consideration of a case?

Response: A judge's role is to fairly and impartially consider the facts and applicable law in a particular case, without regard to personal or emotional views.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither of these outcomes is desirable. If confirmed, I would work hard to avoid both.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied this issue in enough detail to opine on any such trend. If confirmed, my role would be to carefully analyze the facts and law of the particular case or controversy presented to me.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review is a feature of our constitutional system of checks and balances that allows for review by the courts of the actions of the legislative and executive branches of government. I understand judicial supremacy to refer to the view that the Supreme Court is the final interpreter of the meaning of the Constitution and its decisions should be binding on the other branches of government.

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: This is a matter for individual elected officials to decide. Their

considerations could include the need to promote the rule of law and the legitimacy of judicial decisions.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: Separation of powers and checks and balances are critical features of our democracy written into the Constitution. Hamilton's words recognize that the role of the judiciary is limited, and is enforceable through a strong belief in the legitimacy of the courts and rule of law.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extendthe precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: A lower court judge is bound by Supreme Court and circuit court precedent, regardless of whether he or she believes that such precedent may be correctly or incorrectly reasoned. A judge also should only address the issues presented by the case or controversy before him or her.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None. The federal sentencing statute, 18 U.S.C. § 3553(a) sets forth the permissible factors for consideration in a sentencing.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in ruralareas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this particular definition by President Biden. As a judicial nominee, it would be inappropriate for me to opine on his views. I generally view equity as synonymous with fairness.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: Although I have not studied this issue in detail, I understand the two terms to refer to different concepts. Merriam Webster's Collegiate Dictionary (11th ed. 2007) defines equity as "justice according to natural law or right, specifically freedom from bias or favoritism," and equality as "the quality or state of being equal."

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The word "equity" does not appear in the Equal Protection Clause of the Fourteenth Amendment.

27. How do you define "systemic racism?"

Response: I define "systemic racism" as a set of institutions, policies, or practices that that disadvantage certain persons based on race.

28. How do you define "critical race theory?"

Response: I have not studied this issue in sufficient detail to provide a definition. Generally, I know "critical race theory" to be an area of legal scholarship addressing issues of race.

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: I understand "critical race theory" to be an academic area of study and "systemic racism" to be a societal issue.

30. Please answer (with a "Yes" or "No" only) the question that you were asked by Senator Grassley at your nomination hearing: Do you stand by the views set forth in the amicus brief you wrote in 2010 (advocating for the removal of handguns from American homes)?

Response: The position expressed in the amicus brief was that of my law firm's clients. As I stated at my hearing, I was asked to work on the brief early in my tenure as a junior associate at the firm. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. As an advocate, I have always been duty-bound to zealously represent the interests of my clients. I understand that the role of a judge is different. I am confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit on all issues, including the Second Amendment.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

   Response: My approach to the work of a judge, if I am confirmed, would be to ensure that all parties have the opportunity to present their arguments to the court; to carefully develop the factual record as it pertains to the legal dispute; to analyze the relevant precedents and legal arguments raised by the parties; to fairly and impartially apply the appropriate legal standards to the factual record; to reach decisions expeditiously but thoughtfully; and to articulate those decisions in a clear manner.

2. **Would you describe yourself as an originalist?**

   Response: I do not associate myself with any particular label. Interpretation of a constitutional or statutory provision always begins with the text of the provision at issue.

3. **Would you describe yourself as a textualist?**

   Response: I do not associate myself with any particular label. Interpretation of a constitutional or statutory provision always begins with the text of the provision at issue.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I believe that the Constitution was remarkable in its conception and is remarkable in how it continues to endure today. If confirmed, I would follow Supreme

Court and Second Circuit precedent concerning the meaning of any particular constitutional provisions.

5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: Although I have not studied particular Supreme Court Justices' jurisprudence in enough detail to opine on that particular question, I have long admired Justices Sandra Day O'Connor and Ruth Bader Ginsburg as role models for women in law.

6. Was Marbury v. Madison correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice and that present facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that they were correctly decided. *Marbury v. Madison* is one of those decisions.

7. Was Lochner v. New York correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided.

8. Was Brown v. Board of Education correctly decided?

Response: I believe that *Brown v. Board of Education* is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

9. Was Bolling v. Sharpe correctly decided?

Response: Please see my answer to Question 7.

10. Was Cooper v. Aaron correctly decided?

Response: Please see my answer to Question 7.

11. Was Mapp v. Ohio correctly decided?

Response: Please see my answer to Question 7.

12. Was Gideon v. Wainwright correctly decided?

Response: I believe that *Gideon v. Wainwright* is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

13. Was Griswold v. Connecticut correctly decided?

Response: Please see my answer to Question 7.

14. Was South Carolina v. Katzenbach correctly decided?

Response: Please see my answer to Question 7.

15. Was Miranda v. Arizona correctly decided?

Response: Please see my answer to Question 7.

16. Was Katzenbach v. Morgan correctly decided?

Response: Please see my answer to Question 7.

17. Was Loving v. Virginia correctly decided?

Response: I believe that *Loving v. Virginia*, is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

18. Was Katz v. United States correctly decided?

Response: Please see my answer to Question 7.

19. Was Roe v. Wade correctly decided?

Response: Please see my answer to Question 7.

20. Was Romer v. Evans correctly decided?

Response: Please see my answer to Question 7.

21. Was United States v. Virginia correctly decided?

Response: Please see my answer to Question 7.

22. Was Bush v. Gore correctly decided?

Response: Please see my answer to Question 7.

23. Was District of Columbia v. Heller correctly decided?

Response: Please see my answer to Question 7.

24. Was Crawford v. Marion County Election Bord correctly decided?

Response: Please see my answer to Question 7.

25. Was Boumediene v. Bush correctly decided?

Response: Please see my answer to Question 7.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: Please see my answer to Question 7.

27. Was Shelby County v. Holder correctly decided?

Response: Please see my answer to Question 7.

28. Was United States v. Windsor correctly decided?

Response: Please see my answer to Question 7.

29. Was Obergefell v. Hodges correctly decided?

Response: Please see my answer to Question 7.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: If I am confirmed as a district court judge, I would not be presented with a question of whether an appellate court should reaffirm its own precedent, as that would rest with the appellate court itself. If I am confirmed as a district judge, I would apply all binding Second Circuit precedent.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: If I am confirmed as a district court judge, I would not be presented with a question of whether an appellate court should reaffirm its own precedent, as that would rest with the appellate court itself. If I am confirmed as a district judge, I would be bound to apply all binding Second Circuit precedent.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: This is not one of the factors that a sentencing court may consider under 18 U.S.C. § 3553(a) when imposing a sentence.

Questions from Senator Thom Tillis
for Sarala Vidya Nagala
Nominee to be United States District Judge for District of Connecticut

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Judicial activism can mean different things. It can occur when a judge decides a case based on his or her personal views, rather than following the law, when the two conflict. Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is absolutely an expectation for a judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: The role of a judge is to decide a case or controversy presented to her. A judge should not evaluate policy decisions in order to reach a desired outcome.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. I am prepared to faithfully interpret the law even if it results in what one might deem an undesirable outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller,* 554 U.S. 570 (2008), in which the Supreme Court held that the Second Amendment right to keep and bear arms is an individual right, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), in which the Supreme Court held that the Second Amendment applies to the states.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: If confirmed, I would faithfully follow the precedents of the Supreme Court and the Second Circuit to analyze any issue, including whether there is a violation of the Second Amendment or any other constitutional right.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: If confirmed, I would faithfully follow the precedents of the Supreme Court and the Second Circuit to analyze any issue, including whether to grant qualified immunity in a particular case. The relevant questions in determining whether qualified immunity applies are: (1) whether a constitutional right would have been violated on the facts alleged; and (2) whether the right was "clearly established" at the time of the violation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001).

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a judicial nominee, it would be inappropriate for me to comment on the scope of qualified immunity protections for law enforcement officers. If confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit in all areas, including questions of qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: As a judicial nominee, it would be inappropriate for me to comment on the scope of qualified immunity protections for law enforcement officers. If confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit in all areas, including questions of qualified immunity.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: If I am confirmed and a patent eligibility case were to come before me, I will faithfully follow the precedents of the Supreme Court, including *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and relevant circuit courts in evaluating the arguments

presented by the parties.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how nominees would decide matters that could come before them, if confirmed. Additionally, during my nine years as an Assistant United States Attorney, I have not had occasion to become familiar with the relevant patent precedents that would be relevant to analyzing this hypothetical. When I have encountered areas of the law with which I am unfamiliar, I have made sure to delve deeply into the relevant case law to ensure that I fully understand an issue, and I would continue to do so if confirmed. If I am confirmed and a matter like the hypothetical posed in Question No. 13a came before me, I would look to Supreme Court and relevant circuit precedents, and would apply those precedents to the facts of the case before me. To the extent that the question poses a policy judgment about what the law should be, that is a matter suited for the legislature.

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: Please see my answer to Question 13a.

c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Please see my answer to Question 13a.

d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?

Response: Please see my answer to Question 13a.

e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?

Response: Please see my answer to Question 13a.

f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: Please see my answer to Question 13a.

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my answer to Question 13a.

h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: This is a policy question to be answered by the legislature.

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my answer to Question 13a.

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my answer to Question 13a.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As noted in my response to Question 13a, during my nine years as an Assistant United States Attorney, I have not had occasion to become familiar with patent law jurisprudence such that I could opine on its current state. I also believe it would be inappropriate for a judicial nominee to opine on policy matters. If I am confirmed and a case involving patent eligibility comes before me, I would faithfully apply Supreme Court and relevant circuit precedents on this issue to the facts of the particular case.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Omar Williams
Judicial Nominee to the U.S. District Court for the District of Connecticut

1. **How, if at all, should judges prevent implicit bias in *voir dire*?**

   Response: Judges are charged with ensuring the fairness of all aspects of court proceedings, to include jury selection. As a state court judge, I have regularly reminded jurors about their obligation to be fair and to carefully and thoughtfully weigh the evidence in their case, without regard to any bias or prejudice. This, of course, also is important for judges to remember.

2. **What is implicit bias?**

   Response: While I leave the definition to experts and social scientists, I believe implicit bias refers to the unconscious shortcuts our mind makes in processing information, resulting in stereotypes or in undue favor for, or bias against, a person or a group of people.

3. **Do you have any implicit biases? If so, what are they?**

   Response: In my training as a state judge, I have learned that everyone is susceptible to implicit bias, and that it is our responsibility to address it within ourselves. In adhering to Canons 2 and 3 of the Code of Conduct, I find it most helpful to identify any such bias and to prevent it from interfering with my work, as I have done in my service as a state court judge. I will continue this effort if I am fortunate enough to be confirmed as a United States District Judge.

4. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: I believe super precedent commonly refers to case law so foundational to our American legal identity that it is not likely to be challenged (or, if challenged, that would be highly unlikely to be overturned), but I do not believe it to be a legal term defined through federal case law or through legislation. There is debate over which cases constitute "super precedent," but if I am fortunate enough to be confirmed, I will follow all binding precedent from the Supreme Court of the United States and from the Second Circuit.

5. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: Yes, *Terry v. Ohio*, 392 U.S. 1, 30 (1968) allows for an open-hand pat down of a suspect's outer clothing for weapons when an officer has reasonable and articulable suspicion to believe that "criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous."

6. **Should law firms undertake the pro bono prosecution of crimes?**

Response: Rather than opining on what the law should allow, our courts should defer to what the law permits.

7. **Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a "living constitution"?**

Response: I am unfamiliar with Judge Brown Jackson's comments or their context, but judges must follow the law as it is written, and as interpreted in binding precedent.

8. **Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

Response: I am unaware of any legal authority for the private prosecution of federal crimes.

9. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

Response: Yes, I would hire a capable law clerk regardless of their legal philosophy, political leanings, or other personal beliefs, so long as they would be able to diligently follow the law and to faithfully serve the public.

10. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

Response: Judges must follow the law (and ethical canons) as written rather than opining on what should be permissible. I have done this as a state court judge, and I will continue to do so if fortunate enough to be confirmed.

11. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

Response: I am unfamiliar with any ethical canon that allows someone's identity to render them unworthy of legal representation.

12. Do you agree with the proposition that some clients do not deserve representation on account of their:

a. Heinous crimes?

Response: No.

b. Political beliefs?

Response: No.

c. Religious beliefs?

Response: No.

13. Should judicial decisions take into consideration principles of social "equity"?

Response: I have not seen social equity as a factor courts should consider in making any legal decisions. To the extent this question asks my thoughts on whether judges ought to be able to consider social equity, I reiterate that judges must follow the law as it exists rather than offering general opinions on what the law should allow.

14. Do you believe that we should defund police departments? Please explain.

Response: Questions about the level of funding that police departments should receive are policy decisions that should be made by the other branches of government.

15. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Questions about the level of funding that police departments should receive are policy decisions that should be made by the other branches of government.

16. Do you believe that the federal government should reallocate funds away from the Department of Justice, specifically, U.S. Attorney's Offices, to provide greater support to the Federal Public Defenders?

Response: Questions about the level of funding that U.S. Attorney's Offices should receive are policy decisions that should be made by the other branches of government.

17. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: As a sitting state court judge, I rule on legal matters presented to me and therefore should not opine on general matters such as the possible emergency response qualifications of social workers.

18. Do you believe legal gun purchases have caused the violent crime spike?

Response: As a sitting state court judge, I rule on legal matters presented to me and therefore should not opine on general matters such as the causal factors related to any increases or decreases in violent crime.

19. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

Response: As a sitting state court judge, I rule on legal matters presented to me and therefore should not opine on general matters such as the factors that substantially impact the number of crimes committed with firearms.

20. Is gun violence a public-health crisis?

Response: As a sitting state court judge, I rule on legal matters presented to me and therefore should not opine on general matters such as whether gun violence is a public-health crisis.

21. Is racism a public-health crisis?

Response: As a sitting state court judge, I rule on legal matters presented to me and therefore should not opine on general matters such as whether racism is a public-health crisis.

22. Is the federal judiciary affected by implicit bias?

Response: Many experts (including those who have presented at training sessions I have attended) believe everyone and every institution has implicit bias. Karen Steinhauser, EVERYONE IS A LITTLE BIT BIASED (Mar. 16, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/04/everyone-is-biased/.

23. Do you have implicit bias? How do you know if it's implicit?

Response: I am not an expert in implicit bias, but I believe each of us has some form of implicit bias and that it is our obligation to identify it and to address it. Through assessment and self-awareness, it is possible to identify bias and to counteract it.

a. If you answered yes, how does implicit bias impact you in your day to day role as a prosecutor, particularly as it pertains to your:

i. Recommendations regarding pre-trial detention?

Response: I have never served as a prosecutor, but in my role as a state court judge, I always am mindful not to favor or disfavor anyone because of how they present (for example, in terms of appearance, name, race, ethnicity, sex, sexual orientation, kindness, rudeness, or their lawyer's characteristics) but to make my decisions, including pre-trial detention decisions, based on the facts in that person's case and the factors that are set by state law and applicable legal precedent.

ii. Recommendations regarding sentencing?

Response: I have never served as a prosecutor, but in my role as a state court judge, I always am mindful not to favor or disfavor anyone because of how they present (for example, in terms of appearance, name, race, ethnicity, sex, sexual orientation, kindness, rudeness, or their lawyer's characteristics) but to make my decisions, including sentencing decisions, based on the facts in that person's case and the factors that are set by state law and applicable legal precedent.

24. You can answer the following questions yes or no:

a. Was *Brown v. Board of Education* correctly decided?

Response: Yes. Deference to precedent falls within the primary canon of the Code of Conduct for Unites States Judges, and Canon 3A(6) requires judges to refrain from public comment about cases presently before the court and those that reasonably might appear before the court in the future. There are very few cases that are so central to our core American legal identity and that are unlikely to be the subject of litigation again in my lifetime that allow for a judge's response. *Brown v. Board of Education* is so central to our legal identity as a nation, and so unlikely for its subject matter to return to court for litigation within my lifetime, that I can say with confidence that it was correctly decided.

b. Was *Loving v. Virginia* correctly decided?

Response: Yes. Deference to precedent falls within the primary canon of the Code of Conduct for Unites States Judges, and Canon 3A(6) requires judges to refrain from public comment about cases presently before the court and those that reasonably might appear before the court in the future. There are very few cases that are so central to our core American legal identity and that are unlikely to be the subject of litigation again in my lifetime that allow for a judge's response.

Loving v. Virginia is so central to our legal identity as a nation, and so unlikely for its subject matter to return to court for litigation within my lifetime, that I can say with confidence that it was correctly decided.

c. Was *Griswold v. Connecticut* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

d. Was *Roe v. Wade* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

f. Was *Gonzales v. Carhart* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

g. Was *District of Columbia v. Heller* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the

court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

j. Was *Sturgeon v. Frost* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

k. Was *Juliana v. United States* (9th Cir.) correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this decision.

l. Was *Rust v. Sullivan* correctly decided?

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this binding decision of the Supreme Court.

25. Is threatening Supreme Court Justices right or wrong?

Response: Threatening anybody is improper, but our judiciary must function without distraction from threats or other outside potential influences.

26. Do you think the Supreme Court should be expanded?

Response: Questions about the appropriate size of the Supreme Court is a policy decision that should be made by the other branches of government.

27. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: This would be a fact-specific determination based on the specific communication that was alleged to have been an "attack," and the context surrounding it.

28. Does racism qualify as a public health emergency?

Response: As a judge, I rule on matters brought before the court. This question is better answered by the branches of government outside of the judiciary. If I am confirmed as a district judge, I will focus on my limited Article III role.

29. Is climate change real?

Response: As a judge, I rule on matters brought before the court. Findings of scientific fact are based upon reliable evidence such as expert testimony or supporting documents.

30. Is the federal judicial system systemically racist? Please explain.

Response: As a state court judge of seven years, I have never had to adjudicate whether someone or some institution was racist, though I have had to assess whether conduct violated the law, such as whether it amounted to intimidation based upon bigotry or bias. I make sure to treat everyone in the courtroom fairly, with dignity and respect, and would do the same if confirmed as a district judge.

a. If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?

Response: As a state court judge of seven years, I have never had to adjudicate whether someone or some institution was racist, though I have had to assess whether conduct violated the law, such as whether it amounted to intimidation based upon bigotry or bias. I make sure to treat everyone in the courtroom fairly, with dignity and respect, and would do the same if confirmed as a district judge.

31. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?

Response: It is most important for the judiciary not to involve itself with policy decisions, but to assess the merits of each case before the court.

32. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

Response: In my service as a judge I am respectful of the prosecutor's discretion in determining which cases to pursue, especially in that they are the one who is deeply involved in the preparation of the case, the assessment of the evidence to be introduced, and the availability and credibility (or lack thereof) of material witnesses, among other things.

33. Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?

Response: I have not to my knowledge spoken at any events sponsored or hosted by any of these groups.

a. American Constitution Society

Response: None.

b. Arabella Advisors

Response: None.

c. Demand Justice

Response: None.

d. Fix the Court

Response: None.

e. Open Society Foundation

Response: None.

34. What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?

Response: As a state court judge of seven years and as a public defender for eleven years before that, I have never had to consider the imposition of a nationwide injunction. In assessing any such relief, I would carefully consider the arguments and authority presented by the parties, together with the apparently relevant considerations set forth in 5 U.S.C. § 706, remaining hesitant to issue an order that extends beyond the impact to the parties.

35. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: *District of Columbia v. Heller*, 554 U.S. 570 (2008) is binding authority on this topic, but the Supreme Court did not specify which level of scrutiny was applied. *Heller*, 554 U.S. at 634. *See Kachalsky v. County of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012); *U.S. v. Decastro*, 682 F.3d 160, 165 (2d Cir. 2012). Accordingly, the United States Court of Appeals for the Second Circuit has developed a two-step inquiry to determine the appropriate legal standard to apply in assessing the constitutionality of regulations that implicate the Second Amendment. *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015). Judges must consider: "(1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law's burden on the right" in determining whether to apply intermediate or strict scrutiny. *Id.* at 258 (internal citations and quotations omitted).

36. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

Response: I do not let my personal views interfere with my work as a judge in carefully considering cases brought before me.

37. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

Response: If confirmed, I will follow Canon 3.C. in its guidance regarding disqualification of judges, and any other source necessary to ensure that I am upholding the independence and impartiality of the judiciary (and preventing even the appearance of impropriety).

38. In your career as a prosecutor, did you ever encounter a defendant who sought to withdraw his guilty plea? Please provide an approximation of the number.

Response: I have never served as a prosecutor but both as a judge and as a public defender I believe I have encountered a small number of defendants out of the thousands of cases with which I have been involved when the accused wished to withdraw a guilty plea. I would estimate that there have been fewer than five such instances (when it was not an express part of a plea agreement, as occasionally was customary while I was a public defender in New Haven).

a. In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation.

Response: I cannot recall a judge ever refusing to dismiss a case upon prosecutorial motion, and to the best of my recollection, I have never done so.

39. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: Neither; the court, in assessing a case before it, determines whether a law substantially burdens the free exercise of religion. *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014). However, federal courts "have no business addressing" whether a religious belief is reasonable. *Id.* at 724.

b. How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?

Response: In assessing whether a legislative mandate that a corporation provide health insurance coverage for contraceptives amounted to a substantial burden on the free exercise of religion, the Supreme Court in *Hobby Lobby* noted that the plaintiffs had "a sincere religious belief that life begins at conception," and determined that requiring them to provide health insurance that covered birth control methods resulting in the destruction of an embryo would amount to forcing them to engage in conduct that "seriously violates their religious beliefs." *Burwell v. Hobby Lobby*, 573 U.S. 682, 720 (2014). Citing the financial penalties that could be imposed upon the plaintiffs for noncompliance, the Supreme Court determined that such "severe" economic consequences would be "surely substantial." *Id.* It went on to reference the competitive disadvantages that likely would accompany a decision to discontinue providing health insurance to employees; *id.* at 722; and to explain that the law's mandate required the plaintiffs to do something they believed to be immoral and in violation of their genuinely-held religious beliefs, thereby implicating "a difficult and important question of religion and moral philosophy." *Id.* at 724. Ultimately, the "enormous sum of money" that the plaintiffs could have to pay for their noncompliance was found to be a substantial burden on their religious beliefs. *Id.* at 726. With respect to whether I agree with this method of analysis, I never let my personal preferences or beliefs interfere with my obligation to follow the law and all binding authority.

40. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: As with in all other matters before the court, I do not inject my personal beliefs (if I have any on an issue) into my work as a judge; I follow relevant precedent, whether or not I tend to agree with its reasoning. I agree that the First Amendment is foundational, and I commit to applying all Supreme Court precedent including precedent regarding the free exercise of religion.

41. Do Blaine Amendments violate the Constitution?

Response: Yes, as discussed in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

42. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

Response: If I am fortunate enough to be confirmed, I will faithfully apply the law to the facts and circumstances of each case that is brought before me, but it will not be for me to seek out certain cases.

43. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On March 9, 2021, I submitted to United States Senators Richard Blumenthal and Christopher Murphy my application for nomination. On March 10, 2021, I was notified by Senator Blumenthal's staff that my materials would be forwarded to the Advisory Committee. On April 6, 2021, I interviewed with Senator Blumenthal and Senator Murphy. On April 16, 2021, I was notified by staff for Senator Blumenthal that my name was being submitted to the White House. On April 18, 2021, I was contacted by the White House Counsel's Office, and interviewed with attorneys from that office on April 19, 2021. Since April 21, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 2021, my nomination was submitted to the Senate.

44. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: No.

45. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

No.

a. Did anyone do so on your behalf?

Response: No.

46. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

a. Did anyone do so on your behalf?

Response: No.

47. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

Response: No.

a. Did anyone do so on your behalf?

Response: No.

48. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: On April 18, 2021, I was contacted by the White House Counsel's Office, and interviewed with attorneys from that office on April 19, 2021. Since April 21, 2021, I

have been in contact with officials from the Office of Legal Policy at the Department of Justice.

49. Please explain, with particularity, the process whereby you answered these questions.

Response: I thought carefully about these questions before answering them and performed research where necessary (to accurately report on the state of the law). I also reviewed some of the questions posed to prior nominees, and, in some instances, their responses. However, each response to these questions has been my own. Before final submission, I provided a draft of my answers to the Office of Legal Policy and made revisions before final submission to the Senate.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Omar Antonio Williams, nominee to the UnitedStates District Court for the District of Connecticut

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previouslyprovided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible andwhat efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, pleasestate the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **You argued in a 2002 article in the Connecticut Public Interest Law Journal that change in venue motions in police misconduct cases are unconstitutional. Please explain this argument, and state whether you agree with it today.**

Response: In the article I wrote some twenty years ago (in law school), I noted that criminal trials should take place in the district in which the criminal conduct allegedly occurred, unless either party shows that a fair and impartial trial cannot be had in that location. *When Change of Venue Means Change in Verdict: A Critical Analysis of Venue, and its Impact upon the* Diallo *Trial*, 2 CONN. PUB. INT. L.J. 65, 68—69 (2002) (citing applicable law). While the writing went on to consider broad policy concerns in such cases, I now apply the existing rule of law in my role as a judge, leaving policy makers to consider the impact of those laws. In my seven years as a state court judge, I have ruled with fairness and with legal accuracy in assessing venue, and in presiding over cases alleging both on-duty and private-capacity claims of police misconduct. I have deep respect for the rule of law and for the impartiality of the judiciary as required by Canon 2 of the Code of Conduct for United States Judges.

2. **You were the co-chair of the Jury Selection Task Force for the State of Connecticut Judicial Branch. The task force, from what I understand, was attempting to eliminate racial bias in the jury selection process.**

   a. **Do you think the Connecticut Judicial Branch is infected with systemic racism?**

   Response: In my current role as an individual state court judge, I do not diagnose whether the Judicial Branch is systemically racist, though I do my best in every case before me to apply the law with fairness and with accuracy, and without undue influence of any kind.

   b. **Please explain the *Batson* challenge procedure?**

   Response: *Batson* prevents the exclusion of a potential juror from service due to purposeful racial discrimination. *Batson v. Kentucky*, 476 U.S. 79 (1986). The test presumes the potential for discrimination and requires proof of membership in a "cognizable racial group;" *Batson*, 476 U.S. at 96; but it is the movant's (defendant's) burden to show that the prosecutor purposefully used racial discrimination to preclude certain potential jurors through the use of peremptory challenges. Once the defendant establishes a prima facie case under *Batson* (by highlighting factors such as a pattern of excluding black jurors, or the type of questions posed to certain potential jurors), the burden shifts to the prosecution to provide a race-neutral reason for the peremptory challenge in attempting to overcome the claim of purposeful discrimination. *Batson*, 476 U.S. at 97-98. Finally, if the state can provide a race-neutral reason to strike the potential juror, the burden shifts back to the defendant to convince the court that the race-neutral reason provided by the state was not genuine (and thus that striking the potential juror was racially discriminatory).

   c. **How many *Batson* claims were successfully litigated in the past year in Connecticut state courts? Does the number indicate a the prevalence of racial bias in the jury selection process?**

Response: Internet searches have not been fruitful in definitively determining the number of *Batson* claims successfully litigated in the past year in Connecticut state courts (making it difficult to use such statistics to assess racial bias as requested in the second half of this question). However, the Supreme Court of Connecticut in *State v. Holmes*, 334 Conn. 202, 204 (2019), noted that *Batson* "has been roundly criticized as ineffectual in addressing the discriminatory use of peremptory challenges during jury selection." As a result, the Supreme Court of Connecticut created a Jury Selection Task Force to, among other things, collect data intended for analysis and action in eradicating racial bias from our jury trials and from our jury selection process. I was asked to serve on this task force and did so. I would note that prior Connecticut appellate cases such as *State v. Moore*, 169 Conn. App. 470 (2016) previously highlighted the absence of certain data collection.

d. Do you think the federal judiciary is infected with systemic racism?

Response: I have never as a judge had to determine whether a person or an institution is racist (though I have had to assess whether certain conduct violated certain laws intended to protect against such things as intimidation based upon bigotry or bias). Instead, I am sure to treat everyone before me with fairness, dignity, and respect, and to accurately apply the law.

3. Is the ability to own a firearm a personal civil right?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court of the United States held that the Second Amendment protects "an individual right to keep and bear arms."

4. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: To the best of my knowledge, I am unaware of any Supreme Court precedent indicating that the right to own a firearm receives less protection than the other individual rights specifically enumerated in the Constitution.

Questions for the Record for Omar Antonio Williams
From Senator Mazie K. 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?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Omar Williams, D. Conn.

1. How would you describe your judicial philosophy?

Response: In my seven years as a state court judge, I believe I have followed the law as it is written and the legal precedent of binding authority. I have dedicated myself to allowing parties to be heard, treating people fairly with dignity and respect, entering rulings that are firmly rooted in the law, and in articulating those rulings so people understand their derivation. If confirmed as a federal district judge, I would respect those same principles and values.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: If the statute is clear, I would go no further than its unambiguous text. When specific terms are not legislatively defined, I apply their plain meaning. Where there is ambiguity, I look to the context of the legislation and, where applicable, to the interpretation of the statute by courts of review. A law that instructs an administrative agency to carry out its mission but that has ambiguous portions of text requires deference to any reasonable interpretation by the agency charged with enforcing it. And finally, as a last resort, I would look to the legislative history to attempt to clear up any remaining confusion. Overall, it is the carefully crafted text of the statute itself that should be given full weight in statutory construction.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would refer to the constitutional text itself, and would defer to any relevant precedent from the Supreme Court of the United States in its role as the ultimate arbiter of the Constitution. *See Marbury v. Madison*, 5 U.S. 137 (1803).

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: Constitutional interpretation requires strict adherence to the text of the document, and to any binding precedent from the Supreme Court of the United States.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: Full and complete weight is assigned to the plain meaning of clear legislative text.

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic

conventions evolve?

Response: Adherence to the words of a law as they are written also is shaped by the Supreme Court's interpretation of any given constitutional provision over time.

6. What are the constitutional requirements for standing?

Response: To the best of my belief, constitutional standing basically requires a plaintiff to show infringement upon a legal interest, causation, and the existence of an adequate potential remedy. *American Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352 (2d Cir. 2016).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: "The government . . . of the United States, can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. 304, 326 (1816). But Article I, § 8, cl. 18 (the "necessary and proper" clause) permits Congress to make laws that allow it to carry out its explicit powers. "The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply." *Currin v. Wallace*, 306 U.S. 1 (1939). "Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility." *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). The seminal Supreme Court case often cited on this topic is *McCulloch v. Maryland*, which held, "If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted that end, and which are not prohibited, may constitutionally be employed to carry it into effect." *McCulloch v. Maryland*, 17 U.S. 316 (1819).

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: My method of analyzing the claim would depend upon the nature of that claim as raised and argued by the parties, with specific reference to congressional power conferred by the Constitution, and as interpreted by the Supreme Court.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: Yes; the Supreme Court of the United States summarized, "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the liberty specially protected by the Due Process Clause includes the rights to marry, to have children, to direct the education and upbringing of one's children, to

marital privacy, to use contraception, to bodily integrity, and to abortion. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. But we have always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations and internal quotations omitted).

10. What rights are protected under substantive due process?

Response: The Supreme Court of the United States has explained that substantive due process "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—21 (citations and internal quotations omitted); such as those cited in my response to Question 9.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: As a judge, I do not inject my personal beliefs into my assessment of Supreme Court precedent, but I uphold the law as written.

12. What are the limits on Congress's power under the Commerce Clause?

Response: Under the Commerce Clause, Congress has the power to regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce, or persons or things in interstate commerce, and activities substantially related to (or that substantially affect) interstate commerce. *See U.S. v. Morrison,* 529 U.S. 598, 608-09 (2000); *U.S. v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: Strict scrutiny is triggered when a law treats people less favorably based on their race, religion, national origin, or alienage. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971). Religion also is regarded as a suspect class. *Burlington Northern R. Co. v. Ford*, 504 U.S. 648, 651 (1992).

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: Each of the three branches of government was granted limited power by the Constitution. Article I conferred upon the legislature the power to draft laws, Article II gave the executive branch the power to carry out the laws passed by the legislature, and Article III established the judicial branch which assesses legal cases brought before it and also has the power to rule on the constitutionality of laws. This division

of limited authority serves to ensure fair rule by the people without the abuse of power.

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: When a branch of government exceeds its authority and a claim is properly brought before the court, it is the court's obligation to strike down such unauthorized action. Analysis would involve review of the language in the Constitution as well as binding authority in the interpretation of the Constitution.

16. What role should empathy play in a judge's consideration of a case?

Response: None, other than perhaps in how a judge articulates their ruling. But the ruling itself must focus on the rule of law (as it is written, and as it applies to the facts and circumstances of the case before the court).

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: It is the duty of a judge to uphold the constitution and to adhere to the separation of powers, so the court should exercise equally due care to uphold constitutional laws and to invalidate laws that are unconstitutional.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: The very first canon of the Code of Conduct for United States Judges mandates that judges uphold the integrity and independence of the judiciary. As such, I do not find it appropriate for me to stand in judgment of Supreme Court in its actions or in its omissions. Instead, it is my obligation as a state court judge and as a nominee to the federal bench to strictly adhere to binding precedent, which in turn bolsters public confidence in our judiciary and in our form of government.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: I believe that judicial review refers to the court's power to assess the constitutionality of a law, and that judicial supremacy refers to the concept that a court's interpretation of constitutional language takes precedent over conflicting interpretations from either of the other two branches of government, perhaps because the legislature remains capable of further amending the Constitution.

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by

asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: While judges must assess cases brought before them, our courts should respect the balance of powers and should refrain from otherwise opining on how the legislative and executive branches of government should carry out their duties.

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: Upholding the integrity and the independence of the judiciary is the very first canon in the Code of Conduct, and it is accomplished through the neutral and detached work of ruling with fairness on matters brought before the court. Judges and courts cannot make laws. They can only address cases or controversies that are properly brought before them.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extendthe precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As a state court judge for seven years, I have done my best to apply precedent of the Connecticut appellate courts and of the Supreme Court of the United States. If confirmed as a federal district judge, I would be bound to apply precedent from the Supreme Court and from the Second Circuit Court of Appeals, so it would be beyond my authority to stand in judgment of such an appellate court. I would follow the law as it is written, and I would follow all binding authority.

23. **When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?**

Response: None.

24. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American**

persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I have seen President Biden's definition of "equity" as it relates to his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021). I do not have an opinion on President Biden's definition of equity.

25. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: Black's Law Dictionary's Free Online Legal Dictionary (2nd Ed.) (last visited Aug. 9, 2021) defines "equity" in part as "the spirit and the habit of fairness, justness, and right dealing," whereas it defines "equality" as "possessing the same rights, privileges, and immunities, and being liable to the same duties." It goes on to say, "Equality is equity."

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The Fourteenth Amendment does not use or define the term "equity."

27. **How do you define "systemic racism?"**

Response: In my role as a judge, I do not define terms such as "systemic racism," and instead apply legislative language as it is defined by the legislature.

28. **How do you define "critical race theory?"**

Response: In my role as a judge, I do not define terms such as "critical race theory," and instead apply definitions of terminology as provided within legislation that the court is asked to interpret or to apply.

29. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: In my role as a state court judge, I have not had to define or to distinguish the terms "critical race theory" or "systemic racism." I strive to treat all litigants and all those with whom I interact with fairness, dignity, and respect, and I faithfully apply definitions provided in legislation and in executive orders.

30. **In 2002, you argued that change of venue motions should not be permitted in criminal cases involving police misconduct, in part because they may be unconstitutional. Please explain how changing the venue of a trial involving the defendant's (in some cases, highly publicized) misconduct to a more neutral**

location results in a *less* fair trial, rather than a *more* fair trial.

Response: This question refers to a piece that I wrote almost twenty years ago as a law school student before I ever had served as a practicing attorney or as a state court judge. In my seven years as a state court judge, I have ruled with fairness on matters of venue, without regard to any views I previously expressed as a law student.

31. In 2020, you were the co-chair of the Jury Selection Task Force for the State of Connecticut Judicial Branch, which aimed to gather more data on jurors' race for use in the venire process. Please explain how seeking *more* information regarding potential jurors' race contributes to *less* racism in jury selection.

Response: In *State v. Holmes*, 334 Conn. 202 (2019), the Supreme Court of Connecticut created the Jury Selection Task Force to ensure that juries are comprised of a fair cross section of the community, and that they are not limited in diversity. The collection of juror demographics was part of the specific charge given to the Data, Statutes & Rules Subcommittee of the Task Force. Through research cited in the final report of the Task Force, this subcommittee found that diverse juries produce verdicts with fewer racial disparities – for example in sentencing – and so it recommended data collection efforts to produce diverse juries. The data is intended to ensure that a diverse pool of jurors is summoned, to prevent the systematic exclusion of jurors based on classifications such as race, and to determine factors (such as financial hardship) that prevent certain jurors from serving. For privacy, the subcommittee recommended protecting personally-identifiable juror information.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

   Response: In my seven years as a state court judge, I believe I have followed the law as it is written and the legal precedent of binding authority. I have dedicated myself to allowing parties to be heard, treating people fairly with dignity and respect, entering rulings that are firmly rooted in the law, and in articulating those rulings so people understand their derivation. If confirmed as a federal district judge, I would respect those same principles and values.

2. **Would you describe yourself as an originalist?**

   Response: For the reasons stated in my response to Question 1, no, I would not describe myself as belonging to any philosophical school of thought. I have adhered to the judicial philosophy I described above.

3. **Would you describe yourself as a textualist?**

   Response: For the reasons stated in my response to Question 1, no, I would not describe myself as belonging to any philosophical school of thought. I have adhered to the judicial philosophy I described above.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

Response: The words of the Constitution remain unchanged, but the document can be considered "living" insofar as it can be amended by the legislature and in that the Supreme Court (not the District Court) over time can modify and refine its interpretation of certain constitutional provisions.

5. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: I have great admiration for many leaders in the law, but most of all, I look up to local heroes like Justice Lubbie Harper, Jr. and Chief Justice Chase Rogers, both formerly of the Supreme Court of Connecticut. They lead by example with legal acumen, but also in their commitment to the development of others. Each of them recognizes their potential impact to change lives through their mentorship of those who share a love for the rule of law and for an unrelenting work ethic that drives them to arrive at fair results. They have pushed me to exceed my goals, to consider how I can give back to others, and to remain focused on being a good person and in my family and personal life at all times.

6. **Was Marbury v. Madison correctly decided?**

Response: Yes. Deference to precedent falls within the primary canon of the Code of Conduct for United States Judges, and Canon 3A(6) requires judges to refrain from public comment about cases presently before the court and those that reasonably might appear before the court in the future. There are very few cases that are so central to our core American legal identity and that are unlikely to be the subject of litigation again in my lifetime that allow for a judge's response. *Marbury v. Madison* and its recognition of the court's power of judicial review, along with its concession as to the limits of judicial authority, exists at the heart of our government's separation of powers.

7. **Was Lochner v. New York correctly decided?**

Response: With deference to Canons 1 and 3A(6) of the Code of Conduct for United States Judges, and in refraining from comment on matters that might appear before (or return to) the court, I respectfully decline to assess the correctness of this Supreme Court decision.

8. **Was Brown v. Board of Education correctly decided?**

Response: Yes; like *Marbury v. Madison*, *Brown v. Board of Education* is so central to our legal identity as a nation, and so unlikely for its subject matter to return to court for litigation within my lifetime, that I can say with confidence that it was correctly decided.

9. **Was Bolling v. Sharpe correctly decided?**

Response: Yes; like *Marbury v. Madison* and *Brown v. Board of Education*, *Bolling v. Sharpe* is so central to our legal identity as a nation, and so unlikely for its subject matter

to return to court for litigation within my lifetime, that I can say with confidence that it was correctly decided.

10. Was Cooper v. Aaron correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

11. Was Mapp v. Ohio correctly decided?

Response: Referring again to the Code of Conduct for United States Judges for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

12. Was Gideon v. Wainwright correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

13. Was Griswold v. Connecticut correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

14. Was South Carolina v. Katzenbach correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

15. Was Miranda v. Arizona correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

16. Was Katzenbach v. Morgan correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

17. Was Loving v. Virginia correctly decided?

Response: Yes; like *Marbury v. Madison*, *Brown v. Board of Education, and Bolling v. Sharpe*, *Loving v. Virginia* also is so central to our legal identity as a nation, and so unlikely for its subject matter to return to court for litigation within my lifetime, that I can say with confidence that it was correctly decided.

18. Was Katz v. United States correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

19. Was Roe v. Wade correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

20. Was Romer v. Evans correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

21. Was United States v. Virginia correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

22. Was Bush v. Gore correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

23. Was District of Columbia v. Heller correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

24. Was Crawford v. Marion County Election Bord correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

25. Was Boumediene v. Bush correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

27. Was Shelby County v. Holder correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

28. Was United States v. Windsor correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

29. Was Obergefell v. Hodges correctly decided?

Response: Referring again to the Code of Conduct for United States Judges, and acknowledging that all Supreme Court precedent is binding authority, I decline to assess the propriety of this decision.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: If confirmed as a district court judge, precedent from the Second Circuit Court of Appeals would be binding on me, so it would be beyond my authority to stand in judgment of such an appellate court. The appellate court's rulings in turn are subject to review by the Supreme Court of the United States (the ultimate arbiter of the Constitution). If I am fortunate enough to be confirmed, I will follow the law as it is written, and I will follow all binding authority.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: As with my response to Question 30, if I am fortunate enough to be confirmed, I will follow all relevant law and all binding precedent from courts of review.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: Judges must adjudicate each case on its merits and impose sentences in accordance with 18 U.S.C. § 3553 (a). Insofar as parity is concerned, subdivision (6) of subsection (a) of § 3553 cites "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

Questions from Senator Thom Tillis
for Omar Antonio Williams
Nominee to be United States District Judge for the District of Connecticut

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I believe judicial activism refers to a judge ruling based upon what they believe the law should be, rather than ruling based on what the law clearly states. If fortunate enough to be confirmed as a U.S. District Judge, I would not find judicial activism to be appropriate, as I have not found it appropriate in my role as a state judge of seven years.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality (as mandated by Canon 3 in the Code of Conduct) should be every judge's goal and reality; it is our ethical obligation and it bolsters public confidence in the judiciary and in its rulings.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Faithfully interpreting the law is the duty of the court. There are courts of review to correct errors in application, but it is not the role of a judge to determine whether a proper legal outcome is desirable. A judge's desires should be set aside in interpreting the law.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: I will follow the law in ruling on all matters before the court. As it relates to Second Amendment cases, I will uphold the individual right to keep and to bear arms recognized by *District of Columbia v. Heller*, 554 U.S. 570 (2008) and as applied to the

states by the Fourteenth Amendment, as recognized in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: Claims brought before the court are assessed within the context of that stated right or claim. For example, the Supreme Court of the United States assessed the Second Amendment's individual right to keep and to bear arms as it pertained to a ban on gun registration in *District of Columbia v. Heller*, 554 U.S. 570 (2008). Constitutional rights are upheld even in a pandemic, as made clear in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), though judges should be careful not to determine whether local officials "should" be able to take certain action; our courts must assess legal claims based on the law as it exists and not inject a judge's personal beliefs about what the law "should" be.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: I have never had to preside over a qualified immunity case in my seven years as a state court judge, nor have I been a party to such a case in my previous eleven years as a state public defender. However, I believe the qualified immunity test basically holds that law enforcement must be granted qualified immunity when their conduct was not clearly established as unconstitutional at the time that it took place. *Pearson v. Callahan*, 555 U.S. 223 (2009).

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: I set aside my personal beliefs in my role as a state court judge, and I am committed to continuing to do so if I am fortunate to be confirmed as a U.S. District Judge.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Policy decisions such as this are not the province of the judicial branch of government, so it is not appropriate for me to offer my opinion on this matter.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: In my almost two decades of legal experience including seven years as a state court judge in Connecticut, I have not had the opportunity to handle a patent case. However, I routinely have encountered new areas of law and have had to rapidly get up to speed on all relevant precedent, and I commit to doing so if confirmed as a federal district judge and if a patent case comes before me. With respect to this patent eligibility line of questioning, I would apply the tests set forth by the Supreme Court of the United States in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and any other binding precedent.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should** ***BetterThanTesla's*** **billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do in my role as a state court judge.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

f. A business methods company, ***FinancialServices Troll,*** **specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should** ***BioTechCo*** **be able to patent the gene sequence corresponding**

to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do as a state court judge.

j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?

Response: Canon 3A(6) of the Code of Conduct for United States Judges prohibits commenting on matters pending or impending in any court, so without commenting on the merits of this hypothetical, I will affirm that I will follow all applicable law in analyzing cases before me, as I presently do in my role as a state court judge.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: In my almost two decades of legal experience including seven years as a state court judge in Connecticut, I have not had the opportunity to handle a patent case. However, I routinely have encountered new areas of law and have had to rapidly get up to speed on all relevant precedent, and I commit to doing so if confirmed as a federal district judge and if a patent case comes before me. With respect to this patent eligibility line of questioning, I would apply the tests set forth by the Supreme Court of the United States in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and any other binding precedent.

July 26, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We are, collectively, athletes, coaches, administrators, and other supporters of women's athletics and gender equity in sports. We enthusiastically support Hampton Dellinger's appointment as Assistant Attorney General for the Office of Legal Policy. Hampton has a long record of opposing gender discrimination and supporting gender equity in sports and in the workplace generally — experience that will be an asset to the Department of Justice. We applaud Hampton's nomination by President Biden and Vice President Harris, and we urge the United States Senate to confirm him quickly.

Sincerely,

Yael Averbuch
Bradley J. Butwin
Sara Collis
Conway Collis
Susan Ellis
Alexander Krieger
Craig McFarlane
Kelly McFarlane
Steve Nelson
Amy Reifert
Becca Roux
Meghan Burke
Rocky Collis
Luke Collis
Anson Dorrance
Meghan Klingenberg
Molly Levinson
Darcy McFarlane
Marilou McFarlane
Heather O'Reilly
Paul Riley
David Werry

July 23, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

As current and former law enforcement officials at the local, state, and federal levels, we write to urge the United States Senate to confirm Hampton Dellinger as an Assistant Attorney General overseeing the U.S. Department of Justice's Office of Legal Policy (OLP). The undersigned include current and former United States Attorneys, North Carolina Attorneys General, and North Carolina District Attorneys and Sheriffs.

Our first-hand experience promoting public safety gives us an understanding of the skills, intellect, integrity, and dedication necessary for high-ranking officials charged with keeping Americans safe. We also know Hampton Dellinger. Many of us have known Hampton for decades, and several of us worked with him personally in North Carolina when he served as Deputy Attorney General and then as Chief Legal Counsel in the Governor's office. During that time and since, Mr. Dellinger has shown that he understands the challenges faced by law enforcement officers and officials and he takes those concerns into account when developing and implementing policy. In these roles, Mr. Dellinger gained vital experience as a legal advisor; he also assisted with the appointment process for North Carolina judges, an experience that he will bring to bear as Assistant Attorney General for the Office of Legal Policy, where he will vet nominations for the federal judiciary, if confirmed.

Mr. Dellinger has also made important contributions as a private sector litigator and commentator on complex legal topics, demonstrating his strong communication skills. Since his service in North Carolina, he has represented companies large and small in complex cases, as well as a significant number of clients on a pro bono basis. He has also provided helpful commentary on topics ranging from pursuing public corruption cases to effective local law enforcement strategies.

Throughout his career, Mr. Dellinger has fought to defend the rights of all Americans. He will continue to do so as Assistant Attorney General for the Office of Legal Policy, bringing a high level of rigor and seriousness to the position. We are confident that Mr. Dellinger will make an outstanding Assistant Attorney General for the Office of Legal Policy. We urge the Senate to confirm him as quickly as possible, so that he can step into his new role and fulfill his duties faithfully, as we know he will.

Sincerely,

Sally Q. Yates
Acting Attorney General of the United States, 2017; Deputy Attorney General, 2015 – 2017; U.S. Attorney, N. District of Georgia, 2004, 2010 – 2015

Jamie S. Gorelick
Deputy Attorney General, 1994 – 1997

David W. Ogden
Deputy Attorney General, 2009 – 2010; Assistant Attorney General for the Civil Division, 1999 – 2001

Kenyen Brown
U.S. Attorney, S. District of Alabama, 2009 – 2017

Mark T. Calloway
U.S. Attorney, W. District of North Carolina, 1994 – 2001

Michael W. Cotter
U.S. Attorney, District of Montana, 2009 – 2017

Steven Dettelbach
U.S. Attorney, N. District of Ohio, 2009 – 2016

Wifredo Ferrer
U.S. Attorney, S. District of Florida, 2010 – 2017

Paul J. Fishman
U.S. Attorney, District of New Jersey 2009 – 2017

Deborah R. Gilg
U.S. Attorney, District of Nebraska, 2009 – 2017

Barry R. Grissom
U.S. Attorney, District of Kansas, 2010 – 2016

Timothy J. Heaphy
U.S. Attorney, W. District of Virginia, 2009 – 2014

Walter C. Holton, Jr.
U.S. Attorney, M. District of North Carolina, 1994 – 2001

Brendan V. Johnson
U.S. Attorney, District of South Dakota, 2009 – 2015

Ronald C. Machen
U.S. Attorney, District of Columbia, 2010 – 2015

Barbara McQuade
U.S. Attorney, E. District of Michigan, 2010 – 2017

Florence T. Nakakuni
U.S. Attorney, District of Hawaii, 2009 – 2017

Bill Nettles
U.S. Attorney, District of South Carolina, 2010 – 2016

Wendy Olson
U.S. Attorney, District of Idaho, 2010 – 2017

Carole S. Rendon
U.S. Attorney, N. District of Ohio, 2016 – 2017

Carter Stewart
U.S. Attorney, S. District of Ohio,
2009 – 2016

Anne M. Tompkins
U.S. Attorney, W. District of North Carolina,
2010 – 2015

John Walsh
U.S. Attorney, District of Colorado,
2010 – 2016

Danny C. Williams
U.S. Attorney, N. District of Oklahoma,
2012 – 2017

Roy A. Cooper III
Governor of North Carolina; State Attorney
General, 2001 – 2017

Josh Stein
Attorney General of North Carolina
2017 – Present

Satana Deberry
Durham County, North Carolina District
Attorney, 2019 – Present

Bobby Kimbrough
Forsyth County, North Carolina Sheriff,
2018 – Present

Jim O'Neill
Forsyth County, North Carolina District
Attorney, 2009 – Present

Edward J. Tarver
U.S. Attorney, S. District of Georgia,
2009 – 2017

John W. Vaudreuil
U.S. Attorney, W. District of Wisconsin,
2010 – 2017

Thomas G. Walker
U.S. Attorney, E. District of North Carolina
2011 – 2016

Stephanie Yonekura
Acting U.S. Attorney, Central District of
California, 2014 – 2015

Michael F. Easley
Former Governor of North Carolina; State
Attorney General, 1993 – 2001

Clarence Birkhead
Durham County, North Carolina Sheriff,
2018 – Present

Nancy Lorrin Freeman
Wake County, North Carolina District
Attorney, 2015 – Present

Spencer B. Merriweather III
Mecklenburg County, North Carolina District
Attorney, 2017 – Present

James R. Woodall, Jr.
Chatham and Orange County, North Carolina
District Attorney, 2005 – Present

The Eastern Band of Cherokee Indians

Principal Chief Richard G. Sneed
Vice Chief Alan B. Ensley

Adam Wachacha
Chairman
Snowbird &
Cherokee Co. Township

David Wolfe
Vice-Chairman
Yellowhill Township

Tribal Council Members

Tom Wahnetah
Yellowhill Township

Bucky Brown
Snowbird &
Cherokee Co. Township

Richard French
Big Cove Township

Perry Shell
Big Cove Township

Bo Crowe
Wolftown Township

Chelsea Saunooke
Wolftown Township

Tommye Saunooke
Painttown Township

Dike Sneed
Painttown Township

Albert D. Rose
Birdtown Township

Boyd Owle
Birdtown Township

I write on behalf of the Eastern Band of Cherokee Indians in support of Hampton Dellinger's confirmation to the position of Assistant Attorney General for the Office of Legal Policy at the Department of Justice. As the sole federally recognized tribe in North Carolina, the Eastern Band had substantial interaction with Mr. Dellinger when he worked in high-level positions within the North Carolina state government. We are convinced that he possesses the integrity and vision to serve as a highly effective Assistant Attorney General.

As both North Carolina's Deputy Attorney General and Chief Legal Counsel to the Governor, Mr. Dellinger demonstrated a clear understanding and respect for tribal sovereignty and its legal underpinnings. He further demonstrated an understanding that, far from being in conflict, the interests of the State and of the Eastern Band could be advanced through cooperation on issues of mutual importance. He worked with the Eastern Band on a range of issues including public safety in Indian country, the protection and repatriation of important tribal cultural resources, and tribal gaming. On each of these issues substantial advancements were made that benefited not only the Eastern Band and its citizens but the interests of all North Carolinians. Mr. Dellinger evidenced a constructive attitude that allowed for real progress in our State.

Mr. Dellinger has maintained a strong interest in Tribal issues ever since leaving State government. We know that, at the Department of Justice, he will bring his acumen and energy to bear on a host of issues of importance to tribes nationwide, including the serious issues related to missing and murdered indigenous women and children.

More generally, Mr. Dellinger has been committed throughout his career to issues of equity and fairness, including working as a volunteer lawyer assisting on civil and voting rights issues. He is a great listener, one who strives to accord respect to all sides of an issue, and we believe that will make him a great public servant at the federal level just as he was in North Carolina.

It is for these reasons that we enthusiastically support Mr. Dellinger's nomination to serve as Assistant Attorney General

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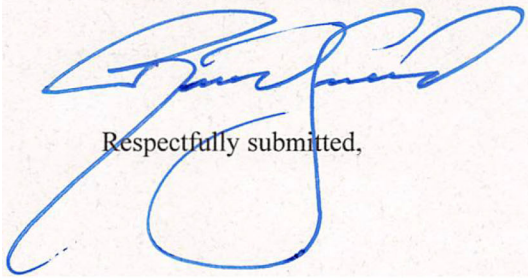
Telephone: (828) 359-7000 • Telefax: (828) 359-0344

overseeing the Office of Legal Policy, and we urge that you confirm his as promptly as possible.

Thank you for considering these views.



Respectfully submitted,

July 23, 2021

Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Confirmation of Hampton Dellinger as AAG-OLP at DOJ

Dear Senators:

We write in support of nominee Hampton Dellinger's confirmation to the position of Assistant Attorney General for the Office of Legal Policy at the Department of Justice.

We support Mr. Dellinger because we know that he understands the importance of tribal sovereignty and of addressing the many challenging legal issues faced by tribal nations in the United States in a productive and creative manner. In the course of an impressive legal career, including service in North Carolina as its Deputy Attorney General and as the Governor's Chief Legal Counsel, Mr. Dellinger has worked on issues of significance to tribal nations, including supporting tribal self-government and economic development, the protection and repatriation of important tribal cultural resources, and public safety in Indian country. Mr. Dellinger understood as a high-ranking State official that affirming and supporting Tribal sovereignty would benefit and not undermine state interests, and he has maintained a strong interest in Tribal issues ever since. In particular, we know that at the Department of Justice Mr. Dellinger will be committed to working to address serious issues related to missing and murdered indigenous women and children.

We also know Mr. Dellinger will be a strong and important voice for diversifying the federal judiciary. During the course of his career, he has been committed to issues of equity and fairness, including working as a volunteer lawyer on civil and voting rights issues. He is an individual of great integrity, and has an unparalleled enthusiasm for the cause of justice and for bettering the lives of all citizens in this country.

We urge you to confirm Hampton Dellinger as Assistant Attorney General overseeing the Office of Legal Policy as promptly as possible.

Thank you for considering our views.

Stephen Greetham
Senior Counsel
Chickasaw Nation
Ada, Oklahoma

Brendan Johnson
Robins Kaplan LLP
Former United States Attorney,
District of South Dakota (2009-2015)
Sioux Falls, South Dakota

Riyaz Kanji
Kanji & Katzen PLLC
Ann Arbor, Michigan

Mike McBride III
Crowe & Dunlevy
Tulsa, Oklahoma

Lloyd Miller
Attorney
Anchorage, Alaska

Lance Morgan
CEO, Ho-Chunk, Inc.
Winnebago, Nebraska

Tim Purdon
Robins Kaplan LLP
Former United States Attorney
District of North Dakota (2010-2015)
Bismarck, North Dakota

Elizabeth Kronk Warner
Professor of Law
Salt Lake City, Utah

Kevin Washburn
Professor of Law
Former Assistant Secretary-Indian Affairs
Department of the Interior (2012-2015)
Iowa City, Iowa

July 26, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write in support of Hampton Dellinger's nomination to serve as an Assistant Attorney General overseeing the Justice Department's Office of Legal Policy. While Hampton's public service as North Carolina's Deputy Attorney General and his pro bono work in support of racial and gender equity are well known, he has also earned respect from private sector leaders.

The undersigned are corporate executives, entrepreneurs, minority contractors, in-house counsel, or private firm attorneys with company clients. Our professional ties cover a range of industries and our personal political views span a wide spectrum. We are united in applauding Hampton's nomination to lead the Office of Legal Policy and in urging the United States Senate to confirm him to this DOJ leadership position.

In North Carolina, Hampton has been recognized as a member of the state's "Legal Elite" by Business North Carolina magazine and by North Carolina Lawyer's Weekly as a 2020 Leader in the Law. He has also handled business disputes of national significance and has written about important legal topics for lawyers as well as the public.

We trust Hampton will serve in the Justice Department with distinction and encourage Senators from both parties to vote in favor of his confirmation.

Sincerely,

C. David Adair

Farad Ali

David Baddour

Charles K. Blackmon

Dan Blue III

Steve Butts

Glenn E. Caplan

Brett J. Denton

Frank E. Emory Jr.

John M. Fogg

Ralph K. Frasier, Jr.

Christopher Gergen

Kodwo Ghartey-Tagoe

Danielle C. Gray

Gagan Gupta

Kenneth B. Hammer

Kenneth B. Hammer

Robert Helmedag

Brian L. Herndon

Marcy Hingst

Moise Khayrallah

Stuart Kupinsky

Bradley R. Kutrow

Cornelious “CC” Lamberth

Kenneth W. Lewis

John I. Mabe, Jr.

Christine Meyer Mazzone

Erik Mazzone

Steve Nelson

Stuart M. Paynter

J. Dickson Phillips

Dr. Daniel Pomp

Karen A. Popp

Lee Harriss Roberts

Bobby Robinson

Kris Shepard

Hayden J. Silver

Keith A. Smith

John P. Stanley

Jim O. Stuckey

Daniel R. Taylor, Jr.

E. Winslow Taylor

Kevin Trapani

Charles Watts

Markus Wilhelm

July 23, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Chairman Durbin and Ranking Member Grassley:

As ministers and faith leaders, we write in support of the confirmation of Hampton Y. Dellinger to the position of Assistant Attorney General for the Office of Legal Policy at the Department of Justice.

With decades of combined experience in the ministry and teaching, we have tried to live out our faith in service both to our congregations and to our communities at large. We have also worked hard to foster Interfaith dialogue and encourage our congregations and students to reach out in service to the broader community in the spirit of justice and mercy. We believe that such generosity of spirit is essential for all people, from the lowest to the highest levels of society.

Throughout his career, Hampton has advocated for just causes and operated with care and concern for his fellow human beings. He has displayed the kind of compassion, humility, and integrity we should demand for our public servants, affirming the dignity of all fellow citizens in the process. In addition to advancing the cause of justice in his private practice, he has a track record of important public service in the North Carolina Department of Justice and the Governor's Office. He has also lent his powerful voice to causes of public concern.

The United States Department of Justice and the country it represents will benefit greatly from Hampton's generosity of spirit. We support him wholeheartedly and ask the Senate to vote in his favor.

Sincerely,

Rev. Jonathan C. Augustine, PhD

Rev. James W. Brunson Sr.

Rev. Dr. Susan Jane Dunlap, PhD

Rev. Jimmie R. Hawkins

Rev. Joseph Sherwood Harvard III

Rev. Curtis L. Johnson, M.Div.

Rev. Dr. H. Stephen Shoemaker, PhD

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
#5480 NORTH CAROLINA STATE CONFERENCE

3 Centerview Drive, Suite 165 • Greensboro, NC 27407
Mailing Address: PO Box 7186 • Greensboro, NC 27417
tel: 866-626-2227 • 919-682-4700 • fax: 919-682-4711
www.naacpnc.org

Rev. Dr. T. Anthony Spearman, State President

July 20, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the North Carolina NAACP, we are pleased to offer our full support for Hampton Dellinger's nomination to serve as Head of The Office of Legal Policy (OLP) at the U.S. Justice Department, and we urge the Senate to confirm him quickly. We know Hampton's work and commitment to issues of civil rights, which have had a major impact for people of color and all Americans in North Carolina and across the country.

Hampton has been a volunteer lawyer for the NAACP at the local, State, and national level and is currently assisting us as we fight to remove confederate monuments from the entrance to courthouses, where colorblind justice is supposed to be a guarantee. Working in the North Carolina Governor's Office, Hampton was known for promoting talented, diverse candidates for judicial appointments, including: G.K. Butterfield, who was appointed to the North Carolina Supreme Court (and is now a member of Congress), Yvonne Mims Evans, who was appointed to the North Carolina State Superior Court (and is now a member of the North Carolina Innocence Commission), and Al Diaz, who was also appointed to the North Carolina Supreme Court (now on the U.S. Court of Appeals for the Fourth Circuit).

Hampton's track record is one that the North Carolina NAACP is proud to support. We know Hampton and trust that, once confirmed, he will continue and accelerate efforts to diversify and thereby improve the federal judiciary. We also believe that he will be an important leader in The Biden Administration advocating for racial equity and social justice.

Thank you for allowing us to offer support.

T. Anthony Spearman

Rev. Dr. T. Anthony Spearman, President

Building Within While Battling Without

July 23, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write as individuals and in our personal capacity because of our longstanding interest in issues of concern to the Hispanic and Latinx legal community. We support strongly the confirmation of Hampton Y. Dellinger to the position of Assistant Attorney General for the Office of Legal Policy at the Department of Justice. We hope that the Senate hears Hampton's testimony and confirms him expeditiously. We are confident Hampton will serve honorably at the Department and seek impartial justice for all Americans.

Hampton has advocated for social justice and racial and gender equity throughout his career, including on a number of issues impacting the Hispanic-Latinx community. As the North Carolina Governor's Chief Legal Counsel, Hampton recruited North Carolina's first Hispanic trial judge, Al Diaz to the bench. Now, twenty years after Hampton urged his initial judicial appointment, Judge Diaz will soon be the Chief Judge of the U.S. Court of Appeals for the Fourth Circuit. Hampton also served on North Carolina's Hispanic-Latino Advisory Board and was the point of contact for the Mexican consulate in North Carolina. And, as state Deputy Attorney General, Hampton fought for rights and protections for migrant workers in North Carolina. Hampton has also used his voice to publicly oppose policies that have harmed the Hispanic-Latinx community. Hampton advocated ending North Carolina's policy of tuition discrimination, which prevents undocumented residents who live in North Carolina from seeking in-state college tuition.

In addition to the work described above, Hampton has successfully represented a diverse set of clients and championed important pro bono causes, including pay equity for female athletes and the relocation of Confederate monuments away from courthouses. His credentials and dedication will be a huge

asset to the Department of Justice once he is confirmed, and we unreservedly support his confirmation.

Sincerely,

s/JTS	s/PRG	s/SNZ
Jennifer T. Salinas	Paul R. Garcia	Stephen N. Zack

SUSAN R. PODOLSKY
ATTORNEY AT LAW

July 26, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nominations of Michael S. Nachmanoff and Patricia Tolliver Giles to the United States District Court for the Eastern District of Virginia.

We are a diverse group of lawyers, practicing in a wide variety of different areas and representing a range of clients. What we share in common is a keen interest in continuing the strong contribution of the Eastern District of Virginia to the federal judiciary and its important role in our constitutional system.

That interest unites us in strongly and uniformly endorsing Patricia and Michael for the two judicial vacancies in the Alexandria Division of the Eastern District of Virginia.

We know Patricia and Michael through various means—as personal friends, professional colleagues, and/or professional adversaries. Both are extraordinarily well qualified to be District Judges and possess the qualities and characteristics required to properly discharge their judicial obligations. In particular, both are highly intelligent, thoughtful, compassionate, strong and fair-minded. Both are willing to work hard to reach fair and reasonable resolutions. And both are people of integrity and high character.

We strongly and respectfully recommend your swift confirmation of their nominations.

KING STREET STATION | 1800 DIAGONAL ROAD | SUITE 600 | ALEXANDRIA, VA 22314
571.366.1702 OFFICE | 571.647.6009 FAX
SPODOLSKY@PODOLSKYLAW.COM

We appreciate your consideration and are available to answer any questions or provide additional information.

Very truly yours,

Susan R. Podolsky
Michael L. Whitlock
Charles B. Molster, III
Bill Stanley
Damon W.D. Wright
Nina J. Ginsberg
Edward B. MacMahon, Jr.
Kimberly Ang
Craig C. Reilly
John R. Ates
Kathleen J.L. Holmes
Sheila M. Costin
Ellen D. Marcus
Andrea Moseley
Jon Bernstein
Leslie Silverman
Rachel Martin
Laurie L. Kirkland
Katherine L. McKnight
Tara R. Zurawski
William B. Porter
David Mercer
Lucia Anna Trigiani
Bernard J. DiMuro
Brian L. Mizer
James O. Broccoletti
Bill Cummings
R. Scott Caulkins
Andrew Peterson
Fernando Bohorquez, Jr.
Carla Jordan-Detamore
Ira S. Hoffman
William D. Dolan, III
Jerome P. Aquino
Charles D. Austin
Sean P. Tonolli
Patrick F. Stokes
Portia Bamiduro
Chenwei Wang Gillis
Eleanor Vuono
Aurelia Briscoe
Jonathan Fahey
Ahmed J. Davis
Heather L. Mulholland
Miles Galbraith
Dwight Crawley
Kristina A. Wolfe
Daniel Grooms
Preston Smith
David P. Baugh
Donald E. Harris
Pierre C. Hines
Brittany Davidson
John C. Kiyonaga
Harmony L. Jones
Robert L. Jenkins, Jr.
Justin Golart
Avier Gaitan
Michael W. Robinson
John O. Iweanoge II
Lavonda Graham-Williams
Kwamina Thomas Williford
Douglas Smith
Carter Burwell
James J. Holt
Paul J. Nathanson
Uzo Asonye
Lasagna Wilhite
Tammi D. Walker
Edna Ruth Vincent
Mark Thrash
Vernida R. Chaney
Aaron Gleaton Clay
David E. Marvin
Charlie Gokey
Charles F. Connolly
Andrew M. Stewart
Karen L. Dunn
Alan Yamamoto
Ariel B. Glickman
Benjamin L. Hatch
Craig Guthery
Tobias Tobler
Michael Sprano
Greg Hunter
Sherry D. Soanes
Jesse Hubbard
Courtney B. Schaefer
Salvador M. Bezos
John O'Connor
Nienke Grossman
Carla Brown
Anand Ramana

July 21, 2021

The Honorable Richard Durbin
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nominations of Patricia Giles and Michael Nachmanoff to the United States District Court for the Eastern District of Virginia.

We each have been privileged to serve as the United States Attorney in that district. Collectively, we also held other line and leadership positions in state and federal law enforcement. We are deeply committed to the principles of fundamental fairness that animate the work of the Department of Justice.

We know Patricia and Michael well and in various ways – as friends, colleagues, and professional adversaries. We can attest, through personal knowledge and by reputation, that they are thoughtful, intelligent, civil, decent, and kind. They are people of high character and strong emotional intelligence who consistently demonstrate in their professional and personal lives characteristics that are fundamental to our system of justice: integrity, independence, and fidelity to the rule of law.

The Eastern District of Virginia has a long history of exemplary service from its many quarters – federal prosecutors, federal defenders, and the bench. Patricia (a prosecutor) and Michael (a defender) are extraordinarily well qualified to serve as United States District Court Judges, and we hope that they will each be confirmed to that post. We are confident that they will continue a proud tradition of service to the district and to the nation, and that they will meet their obligations – as they always have – with honor and distinction.

Respectfully,

Bill Cummings (1975-1979)
Richard Cullen (1991-1993)
Paul McNulty (2001-2006)
Chuck Rosenberg (2006-2008)
Dana Boente (2008-2009; 2013-2018)
Neil MacBride (2009-2013)
Zach Terwilliger (2018-2021)

CHAIR
Randall D. Noel
Randy.Noel@butlersnow.com
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VICE CHAIR
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FIRST CIRCUIT
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Crodriguez-vidal@gaclaw.com
(787) 759-4117

SECOND CIRCUIT
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Vchang@wmd-law.com
(212) 382-3300

THIRD CIRCUIT
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gtroublefield@carellabyrne.com
(973) 994-1700

FOURTH CIRCUIT
Pamela J. Roberts
Pamela.Roberts@bowmanandbrooke.com
(803) 726-7420

FIFTH CIRCUIT
Michael D. Hunt
Michael.hunt@phelps.com
(225) 346-0285

SIXTH CIRCUIT
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Jpinney@graydon.law
(513) 629-2730

SEVENTH CIRCUIT
John Skilton
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(608) 663-7474

EIGHTH CIRCUIT
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Soniamv@sapientialaw.com
(612) 756-7125

NINTH CIRCUIT
Jeffrey Willis
Jwillis@swlaw.com
(520) 882-1200

Yuri Mikulka
Yuri.Mikulka@alston.com
(213) 576-1000

TENTH CIRCUIT
Jennifer H. Weddle
Weddle@gtlaw.com
(303) 572-6500

ELEVENTH CIRCUIT
Suzanne E. Gilbert
Suzanne.Gilbert@hklaw.com
(407) 244-1142

D.C. CIRCUIT
D. Jean Veta
Jveta@cov.com
(202) 662-6000

FEDERAL CIRCUIT
Joseph Michael Drayton
Jdrayton@cooley.com
(212) 479-6000

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STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on
the Federal Judiciary

Please reply to:
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Butler Snow LLP
6075 Poplar Avenue
Suite 500
Memphis, TN 38119
Randy.Noel@butlersnow.com

July 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Patricia Tolliver Giles to the United States District Court for the Eastern District of Virginia

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Patricia Giles, who has been nominated by the President to the United States District Court for the Eastern District of Virginia. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Ms. Giles is **"Well Qualified"** to serve on the United States District Court for the Eastern District of Virginia.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Patricia Tolliver Giles (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

July 14, 2021

The Honorable Dick Durbin
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Toby J. Heytens as Circuit Judge, United States Court of Appeals for the Fourth Circuit

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our support for Toby Heytens's nomination to a seat on the U.S. Court of Appeals for the Fourth Circuit. We came to know Toby while serving as law clerks at the Supreme Court of the United States during the October 2002 Term, when Toby clerked for Justice Ruth Bader Ginsburg. Our ranks include partners at prominent law firms, professors at leading law schools, and current or former government officials from both Democratic and Republican administrations. Many of us routinely practice before the federal appellate courts. We are Republicans, independents, and Democrats, and while our views differ on a great many issues, we are united in supporting Toby's nomination and in urging his confirmation.

Toby received a B.A. from Macalester College in 1997 and a J.D. from the University of Virginia School of Law in 2000. He served as a law clerk for Judge Edward Becker on the U.S. Court of Appeals for the Third Circuit and, as mentioned above, for Justice Ruth Bader Ginsburg on the U.S. Supreme Court. Between those clerkships, he served as a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice. After practicing in the Supreme Court and Appellate Practice Group at O'Melveny & Myers LLP from 2003 to 2006, Toby joined the faculty of the University of Virginia School of Law. He was an Associate Professor of Law there from 2006 to 2007 and from 2010 to 2014, and a Professor of Law from 2014 to 2018. From 2007 to 2010, he again served in the U.S. Justice Department's Office of the Solicitor General as an Assistant to the Solicitor General, during which time he argued six cases before the Supreme Court. Since 2018, Toby has served as Solicitor General for the Commonwealth of Virginia. He has served with distinction in all of these positions.

Although Toby's outstanding qualifications speak for themselves, we can attest to his tremendous legal acumen, work ethic, and judgment. We can also attest to his collegiality and temperament. Our term clerking at the Supreme Court involved many difficult and contentious cases, over which there were deep disagreements. Yet in his interactions with each of us, Toby was invariably thoughtful, respectful, fair, and good humored, earning the admiration of us all. We are confident he will bring those same qualities to his service on the Fourth Circuit.

In sum, Toby Heytens is an outstanding nominee, and we urge the Senate to approve his nomination.

Sincerely,

Priya Aiyar
Law Clerk to Justice Breyer (OT 2002)

Leah Brannon
Law Clerk to Chief Justice Rehnquist (OT 2002)

Andrew DeVooght
Law Clerk to Chief Justice Rehnquist (OT 2002)

Victoria Dorfman
Law Clerk to Justice Thomas (OT 2002)

Mark C. Fleming
Law Clerk to Justice Souter (OT 2002)

John M. Golden
Law Clerk to Justice Breyer (OT 2002)

Emily Johnson Henn
Law Clerk to Justice O'Connor (OT 2002)

Derek T. Ho
Law Clerk to Justice Souter (OT 2002)

Robert K. Hur
Law Clerk to Chief Justice Rehnquist (OT 2002)

Sarah L. Levine
Law Clerk to Justice Souter (OT 2002)

Brian R. Matsui
Law Clerk to Justice Kennedy (OT 2002)

Troy A. McKenzie
Law Clerk to Justice Stevens (OT 2002)

Trevor W. Morrison
Law Clerk to Justice Ginsburg (OT 2002)

Justin A. Nelson
Law Clerk to Justice O'Connor (OT 2002)

John C. O'Quinn
Law Clerk to Justice Scalia (OT 2002)

Maritza U.B. Okata
Law Clerk to Justice Breyer (OT 2002)

Eric R. Olson
Law Clerk to Justice Stevens (OT 2002)

Elizabeth G. Porter
Law Clerk to Justice Ginsburg (OT 2002)

Cristina M. Rodríguez
Law Clerk to Justice O'Connor (OT 2002)

Gil Seinfeld
Law Clerk to Justice Scalia (OT 2002)

Anne K. Small
Law Clerk to Justice Breyer (OT 2002)

Karl Remón Thompson
Law Clerk to Justice Ginsburg (OT 2002)

Igor V. Timofeyev
Law Clerk to Justice Kennedy (OT 2002)

Kathryn A. Watts
Law Clerk to Justice Stevens (OT 2002)

Amy J. Wildermuth
Law Clerk to Justice Stevens (OT 2002)

Michael F. Williams
Law Clerk to Justice Kennedy (OT 2002)[1]

[1] Professional ethics rules prevented certain members of our clerkship class from signing this letter.

July 22, 2021

The Honorable Dick Durbin
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Toby Heytens as Circuit Judge, United States Court of Appeals for the Fourth Circuit

Dear Chairman Durbin and Ranking Member Grassley:

We write to state our enthusiastic support for Toby Heytens's nomination to a seat on the U.S. Court of Appeals for the Fourth Circuit. We are all current or former leaders and volunteers for the American Mock Trial Association, a 501(c)(3) nonprofit organization that promotes legal education to college students. We know Toby as a colleague on the AMTA board of directors, frequent competition host, and volunteer coach for the University of Virginia. Collectively, the people signing this letter include Republicans, Democrats, conservatives, liberals, and libertarians from California, Colorado, Georgia, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, D.C., and Wisconsin. Though we frequently disagree about many issues, and many of us coach rival teams, we are unanimous in support of Toby's nomination and confirmation.

You already know Toby's distinguished legal career. You may be less familiar with the decade-plus he has volunteered toward legal education through his involvement with collegiate mock trial. By serving on the AMTA board of directors since 2010, Toby has helped create opportunities for more than 25,000 college students to learn the work, and develop the skills, of lawyers. By hosting more than 20 mock trial competitions over the last 15 years, Toby has created opportunities for more than 3,000 college students to perform trial simulations and receive feedback from sitting judges and practicing lawyers. And by coaching the University of Virginia team since 2006, Toby has personally taught and mentored more than 100 college students, many of whom have become lawyers, including prosecutors, criminal defense lawyers, law firm partners, and federal clerks (to judges appointed by presidents of both parties).

Toby is impartial, thoughtful, and hardworking. The American Mock Trial Association has four major awards for individuals: an All-American Award, given to a fraction of the top 1% of college student competitors; the W. Ward Reynoldson Award, given to the coaches of teams that qualify for the national championship trial; the Neal Smith Award, given to leaders who further AMTA's education mission; and the Coaches Hall of Fame Award, given to coaches whose teams achieve sustained success in an ethical and collegial manner. In the organization's 36-year history, Toby is one of the few people awarded all four honors.

We urge the Senate to confirm Toby to the Fourth Circuit Court of Appeals. Thank you for your consideration. We[1] are available to provide more information or answer questions.

Sincerely,

David Ben-Merre
Associate Professor
SUNY--Buffalo State College

Justin Bernstein
Director of Trial Advocacy
UCLA School of Law

Alex Bluebond
Senior Associate
Vinson & Elkins LLP

David D. Cross
Chair of Antitrust Litigation Practice
Morrison & Foerster LLP

Michael A. D'Ippolito III, Esq.
Associate
Adler Pollock & Sheehan P.C.

Adam Detsky
Attorney
American Mock Trial Association

Tammy Doss
AMTA Program Coordinator
American Mock Trial Association

Anna Eldridge
Director of Mock Trial and Pre-Law Advising
Rhodes College

Daniel Elliott
Assistant Mock Trial Coach
Rhodes College

Samantha M. Feak
Attorney at Law

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[1] References to institutions, such as law firms and schools, are merely for identification purposes and do not constitute endorsements.

Mello and Pickering, LLP

Gonzalo Freixes
Associate Dean and Adjunct Professor
UCLA Anderson School of Management

Michael J. Gelfand, Esq.
Associate
Westerman Ball Ederer Miller Zucker & Sharfstein, LLP

Dr. Glen Halva-Neubauer
Professor
Furman University

Daniel Herron
Professor
Western Carolina University

Andy Hogan
Mock Trial Head Coach
Xavier University

Samuel Jahangir
Associate
Jenner & Block LLP

Susan H. Johnson
Forensics Program Director
Patrick Henry College

Grant W. Keener
Interim Assistant Dean for Admissions
University of New Hampshire Franklin Pierce School of Law

Barry R. Langford
Associate Professor of Criminal Justice Administration
Columbia College

DeLois T. Leapheart
Professor & Director of Mock Trial Program
Northwood University (Midland, MI)

Joshua Leckrone
Head Coach
University of Cincinnati Mock Trial

Sonali Mehta
Coach
Duke Mock Trial

Diane Michalak
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DuPage County State's Attorney's Office

Angela Minor Attorney & Assoc.
Prof at Howard University School of Communications
American Mock Trial Association, Board Member

Mary Lynn Neuhaus
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Neuhaus Mediation Services

Phil Pasquarello
Trial Competition Director
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Marcus Pohlmann
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Rhodes College

Michael C. Polovich
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Eric Roytman
Head Coach
Duke Mock Trial

Thom Scher
Board of Directors
American Mock Trial Association

Elizabeth Smiley
Associate
Baron & Budd, P.C.

Jacinth Sohi
Director of Member Experience
Found

Michael H. Walsh
Adjunct Professor, Mock Trial and Moot Court Coach

Loyola University Chicago

William Warihay
Attorney and Lecturer
Hasner Law and Georgia Institute of Technology

Nathaniel Warner
Head Coach, Columbia University Mock Trial
Columbia University Mock Trial

Kyle T. West
Senior Associate
Vinson & Elkins LLP

Elise H. Wilson
Associate Attorney
Strawinski & Stout

Johnathan Woodward
President-Elect
American Mock Trial Association

Amelia Yeomelakis
Staff Attorney
The Legal Aid Society

Sara Zeigler
Provost and Senior Vice President for Academic Affairs
Eastern Kentucky University

July 23, 2021

The Honorable Richard J. Durbin
Chair, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510
Via email

Re: Letter in Support of Toby J. Heytens, nominee for the United States Court of Appeals for the Fourth Circuit

Dear Chairman Durbin & Ranking Member Grassley,

As former competitors and coaches of the University of Virginia's undergraduate trial advocacy program, we enthusiastically support Toby J. Heytens as a nominee to fill the current vacancy for a circuit judge on the United States Court of Appeals for the Fourth Circuit. Toby's professional credentials speak for themselves, so we write to express our gratitude for the impact Toby has had on all of us as the coach of the Virginia Mock Trial program for 15 years. Toby is a generous mentor, friend, and role model, and although his name doesn't appear on our school transcripts, he is one of the best and most important teachers any of us ever had. None of us would be thepeople we are now without his guidance, kindness, or support.

Toby is deeply committed to engaging young people in trial advocacy. In addition to his full-time teaching responsibilities as a professor at UVA Law, and his later role as Solicitor General of Virginia, Toby has volunteered his time to lead two four-hour practice sessions for 16 college students every week for the last 15 years. Over the course of each year, he coaches students through nine weekend-long tournaments across the country, spending countless hours reviewing, revising, and rehearsing opening statements, direct and cross examinations, closing arguments, and case theories and strategy. Toby leads by example, instilling in each of us the importance of preparation, attention to detail and self-discipline. He teaches us how to embrace intellectual challenges, to think critically and craft compelling arguments, and to welcome and leverage constructive feedback. He made us students of the law and through his example has made all of us better teachers and advocates as we have matured and become mentors ourselves.

Some of our most significant experiences with Toby were simple: car and plane rides, team meals at his house, coffee runs. We can tell you Toby's favorite movie or album, or his top binge-worthy TV shows. Toby always listened to us, and we turned to him for guidance on some of our most critical decisions – which major we should declare, whether we should apply to law school, and which job we should take. Toby cultivated our individual interests and talents, and was not only consistently available to all of us year-round, but even long after many of us graduated, embarked on careers, and started families. He attended our weddings, our baby showers, and our housewarmings. He never stopped supporting us.

Finally, Toby imparted on all of us his strong character and high ethical standards, and demonstrated the important role that they play in the law and in life. We learned humility from a man who stood each year for retention as head coach through an election by undergraduates; loyalty from a man who asked us for nothing in return for the time and energy he spent growing and bettering young adults; and passion from a man who insisted that the most important thing we could do was not win tournaments, but agree to care deeply about a shared ambition and for one another, no matter the outcome.

The signatories of this letter represent members of Virginia Mock Trial from each of the 15 consecutive years that Toby has been involved with our program, beginning in 2006. Many additional former competitors and coaches wanted to sign, but are unable to do so due to their current roles as federal prosecutors and judicial clerks. We are a diverse group with varying political viewpoints and affiliations, and we have followed various professional trajectories, but we are united in our support of Toby's nomination to the court of appeals.

We were beyond fortunate to learn from and befriend Toby, but we are confident that his impact on us is only a fraction of his impact on the broader legal community. We wholeheartedly and unequivocally believe he would make an exemplary circuit judge. We greatly appreciate your time and consideration of Toby for this role.

Sincerely,

Samantha Bateman
Virginia Beach, VA
University of Virginia '06

Benjamin Sachs
Virginia Beach, VA
University of Virginia'06
University of Virginia Law '09

Mostafa Abdelkarim
Fairfax, VA
University of Virginia '07

Kevin Richards
North Salem, NY
University of Virginia'08
University of Virginia Law '14

Eric Green
Fairfax, VA
University of Virginia '09

Alison Burton
Manhattan, KS
University of Virginia '10

Paul Wiley
Charlottesville, VA
University of Virginia '10

Marcella Coburn
Ellicott City, MD
University of Virginia '11

Maximillian Kirby
Boston, MA
University of Virginia '11

Greg Siegel
Denver, CO
University of Virginia '11

Rakesh Kilaru
Cleveland, OH
Assistant Coach 2010-12

Ben Wallace
Wilmington, DE
University of Virginia '12

Caroline (Mayberger) Rice
Albany, NY
University of Virginia'10

Shikha Gupta, MD
Virginia Beach, VA
University of Virginia'10

Juliana Yee
Sacramento, CA
University of Virginia'10

Meredith (Davis) Schatz
Richmond, VA
University of Virginia'11

Rohan Sebastian
Springfield, VA
University of Virginia'11

Charles Deveas
Severna Park, MD
University of Virginia'12

Reedy Swanson
Knoxville, TN
University of Virginia '12
University of Virginia Law '16

Anya Havriliak
New York City, NY
University of Virginia'13

Megan O'Donnell
Richmond, VA
University of Virginia '13

Brian Mink
Macon, GA
University of Virginia Law '14

Thuan Tran
Falls Church, VA
University of Virginia '15

Benjamin Constine
Arlington, VA
University of Virginia '16

Tanner Pruittt
Macon, GA
University of Virginia '16

DeAnza Cook
Lynchburg, VA
University of Virginia '17

Darby Hobbs
St. Louis, MO
University of Virginia '17
University of Virginia Law '22

Benjamin Schlichting
Henderson, NV
University of Virginia '17
University of Virginia Law '23

Ellen Chapin
Vienna, VA
University of Virginia'14

Alexander Harasty
Herndon, VA
University of Virginia'15

Mackenzie Austin
Hermosa Beach, CA
University of Virginia'16

Eashan Kaw
Cupertino, CA
University of Virginia'16

Katelyn Villany
Colts Neck, NJ
University of Virginia'16

Shray Gupta
South Riding, VA
University of Virginia'17

Alexandria Piacenti
Chester, NJ
University of Virginia'17

Frank Piacenti
Chester, NJ
University of Virginia'18

Megan Keenan
Steubenville, OH
University of Virginia Law '18

Liam Fineman
Lake Worth, FL
University of Virginia'19
University of Virginia Law '23

Sabrina Grandhi
Centerville, OH
University of Virginia '19

Natalia Heguaburo
Boca Raton, FL
University of Virginia'19
University of Virginia Law '23

Deniz Tunceli
Chalfont, PA
University of Virginia '19

Lillian Brock
Herndon, VA
University of Virginia'20

Dan Peale
Covington, KY
University of Virginia '20

Kevin Baker
Columbia, MD
University of Virginia'21

Akash Bhat
Sterling, VA
University of Virginia '21

Raahema Durrani
Pittsburgh, PA
University of Virginia'21

Nicholas Crown
Seattle, WA
Assistant Coach 2013-present

SCHOOL of LAW

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

July 23, 2021

Dear Chairman Durbin and Ranking Member Grassley:

We are writing to express our strong support for the nomination of Toby Heytens to the United States Court of Appeals for the Fourth Circuit.

We are legal scholars at the University of Virginia School of Law, where Toby has taught since he joined our faculty in 2006. We have expertise across many different areas of law, and we represent a wide range of legal and political perspectives within the legal academy. Based on our years of experience working with Toby, we know that he is brilliant, hard-working, conscientious, collegial, and dedicated to serving others. He will bring all those attributes and more to the federal judiciary.

Toby has had an impressive and distinguished legal career, marked by a diversity of experience across the government, the private sector, and the academy. After graduating at the top of his class from the University of Virginia School of Law, he clerked for Judge Edward Becker of the United States Court of Appeals for the Third Circuit, served as a Bristow Fellow in the Office of the Solicitor General of the United States, and then clerked for Justice Ruth Bader Ginsburg at the Supreme Court of the United States. He practiced as a litigator at O'Melveny & Myers LLP, before entering the legal academy. A tenured member of our faculty, Toby was most recently the David H. Ibbeken '71 Research Professor of Law. He has taught courses in Civil Procedure, Civil Rights Litigation, Federal Courts, and Remedies, and was co-director of our Supreme Court Litigation Clinic.

There is no question that Toby is highly qualified to become a federal appellate judge. While on leave from our faculty, in 2007-10, he served as Assistant to the Solicitor General of the United

States and argued six cases before the Supreme Court (giving him a career total of 10 cases argued before the Court). Since 2018, Toby has been the Solicitor General of Virginia, representing the Commonwealth at trial and on appeal in numerous cases before both state and federal courts.

As an educator, scholar, and litigator, Toby's great strength is his ability to articulate difficult and complicated arguments and to make them intelligible for public audiences. Toby brought that skill to the classroom, and students praised him for it in the highest terms, leading him to receive University-wide awards for teaching and service to our academic community. Toby has also won recognition, on multiple occasions, for his exemplary legal writing, both in his scholarship and in his briefing as a litigator. We think it is fair to say that he has distinguished himself as one of the most effective legal communicators in his generation.

Toby is also dedicated to helping others learn the skills that he has mastered. He was a founder of the mock trial team at Macalester College, his alma mater, and since 2006, he has coached Collegiate Mock Trial at UVA, mentoring more than 100 undergraduate students and leading teams to two national championships. For more than a decade, he has also served on the board of directors of the American Mock Trial Association, a nonprofit that has enabled thousands of students to participate across the country.

Throughout his career, Toby has demonstrated all the virtues that distinguish the finest members of the legal profession. He has the highest level of personal integrity and commitment to the rule of law, practical wisdom and clarity of thought, and the impartiality and fair-mindedness that we ought to expect from members of the federal judiciary.

We believe that Toby Heytens is exceptionally well-qualified to serve on the United States Court of Appeals for the Fourth Circuit, and we urge you to confirm his nomination.

Respectfully,

Micah Schwartzman
Hardy Cross Dillard Professor of Law

Kenneth S. Abraham
Harrison Distinguished Professor of Law

Barbara E. Armacost
Professor of Law

Scott Ballenger
Assistant Professor of Law, General Faculty
Director, Appellate Litigation Clinic

Aditya Bamzai
Associate Professor of Law

Charles L. Barzun
Horace W. Goldsmith Professor of Law

Andrew Block
Associate Professor of Law, General Faculty
Director, State and Local Government Law Clinic

Richard J. Bonnie
Harrison Foundation Professor of Law and Medicine
Professor of Public Policy
Director, Institute of Law, Psychiatry and Public Policy

Josh Bowers
F.D.G. Ribble Professor of Law

Darryl K. Brown
O.M. Vicars Professor of Law

D. Ruth Buck
Professor of Law, General Faculty
Co-Director, Legal Research and Writing Program

George M. Cohen
Associate Dean for Curricular Programs
Brokaw Professor of Corporate Law

Michael G. Collins
Joseph M. Hartfield Professor of Law
Joseph W. Dorn Research Professor of Law

Kevin L. Cope
Associate Professor of Law and Public Policy

Anne M. Coughlin
Lewis F. Powell, Jr., Professor of Law

Quinn Curtis
Professor of Law

Michael Doran
The Honorable Albert V. Bryan Jr. '50 Research Professor of Law

John F. Duffy
Samuel H. McCoy II Professor of Law

Joshua Fischman
Professor of Law

Kim Forde-Mazrui
Mortimer M. Caplin Professor of Law
Director, Center for the Study of Race and Law

George S. Geis
William S. Potter Professor of Law
Director, John W. Glynn, Jr. Law & Business Program

Michael D. Gilbert
Vice Dean
Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law
Director, Center for Public Law and Political Economy

Jennifer L. Givens
Professor of Law, General Faculty
Director, The Innocence Project at UVA School of Law

Risa Goluboff
Dean
Arnold H. Leon Professor of Law
Professor of History

Rachel Harmon
Class of 1957 Research Professor of Law

Andrew Hayashi
Class of 1948 Professor of Scholarly Research in Law

Deborah Hellman
David Lurton Massee, Jr., Professor of Law

A. E. Dick Howard
Warner-Booker Distinguished Professor of Law

John C. Jeffries, Jr.
David and Mary Harrison Distinguished Professor of Law
Counselor to the President of the University

Alex M. Johnson, Jr.
James C. Slaughter Distinguished Professor of Law
Dean Emeritus (University of Minnesota Law School)

Leslie Kendrick
White Burkett Miller Professor of Law and Public Affairs
David H. Ibbeken '71 Research Professor of Law

Edmund W. Kitch
Mary and Daniel Loughran Professor of Law

Douglas Laycock
Robert E. Scott Distinguished Professor of Law

Michael A. Livermore
Edward F. Howrey Professor of Law

Julia D. Mahoney
John S. Battle Professor of Law

Paul G. Mahoney
David and Mary Harrison Distinguished Professor of Law

Ruth Mason
Edwin S. Cohen Distinguished Professor of Law and Taxation

Gregory Mitchell
Joseph Weintraub – Bank of America Distinguished Professor of Law
& Joseph C. Carter, Jr. Research Professor of Law

John Monahan
John S. Shannon Distinguished Professor of Law
Hunton Andrews Kurth Research Professor of Law

Thomas B. Nachbar
Professor of Law

Caleb E. Nelson
Emerson G. Spies Distinguished Professor of Law
Caddell and Chapman Professor of Law

Cynthia Nicoletti
Professor of Law
Professor of History

Dotan Oliar
Professor of Law

Daniel R. Ortiz
Michael J. and Jane R. Horvitz Distinguished Professor of Law
Director, Supreme Court Litigation Clinic

Saikrishna Prakash
James Monroe Distinguished Professor of Law

Margaret F. Riley
Professor of Law, Public Health Sciences and Public Policy

George Rutherglen
John Barbee Minor Distinguished Professor of Law

Frederick Schauer
David and Mary Harrison Distinguished Professor of Law

Richard Schragger
Perre Bowen Professor of Law
Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law

Molly Bishop Shadel
Professor of Law, General Faculty

Crystal Shin
Director, Holistic Juvenile Defense Clinic
Associate Professor of Law, General Faculty

Paul B. Stephan
John C. Jeffries, Jr., Distinguished Professor of Law

Gregg Strauss
Class of 1966 Research Professor of Law
Director, UVA Family Law Center

Leon Szeptycki
Professor of Law, General Faculty
Associate Director, UVA Environmental Resilience Institute

Pierre-Hugues Verdier
John A. Ewald Jr. Research Professor of Law
Director, Graduate Studies Program

J.H. (Rip) Verkerke
T. Munford Boyd Professor of Law
Director, Program for Employment and Labor Law Studies

Mila Versteeg
Professor of Law

Sarah Stewart Ware
Professor of Law, General Faculty
Co-Director, Legal Research and Writing Program

G. Edward White
David and Mary Harrison Distinguished Professor of Law

Ann Woolhandler
William Minor Lile Professor of Law
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William H. Hurd
william.hurd@troutman.com

July 23, 2021

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

As the first Solicitor General of Virginia (appointed by a Republican), I write to express my enthusiastic support for the incumbent Solicitor General of Virginia, Toby J. Heytens, who has been nominated by President Joe Biden for a seat on the U.S. Court of Appeals for the Fourth Circuit.

You already know of Mr. Heytens' distinguished career in the law, including his clerkship for Justice Ruth Bader Ginsburg, his professorships at Cornell Law School and the University of Virginia School of Law, and his service since 2018 as the chief appellate lawyer for the Commonwealth of Virginia. Having worked closely with Mr. Heytens in connection with presentations before the Virginia Bar Association, I can tell you from personal experience of his keen intellect, his deep knowledge of the law and his unfailing good humor. He would be an excellent judge and well-suited to continue both the intellectual strength and collegiality that has long-characterized the Fourth Circuit.

Although Mr. Heytens and I come from different sides of the political spectrum, I am confident that he is a superb choice to fill the seat now being vacated by Judge Barbara Milano Keenan.

Sincerely,

Wm. H. Hurd

William H. Hurd
Former Solicitor General of Virginia (1999-2004)

July 23, 2021

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We are pleased to write in support of the nomination of **Toby J. Heytens** to be United States Circuit Judge for the Fourth Circuit.

Each of us served in the Office of the Solicitor General with Mr. Heytens, who was an Assistant to the Solicitor General from 2007-2010 (spanning portions of the Bush and Obama Administrations) as well as a Bristow Fellow in 2001-2002. The signatories to this letter include members of both parties with a wide variety of jurisprudential views. But our professional experience with Mr. Heytens leaves each of us confident that he is highly qualified to serve on the Fourth Circuit and will be an excellent appellate judge.

Mr. Heytens demonstrated superb skills as a writer, legal analyst, and oral advocate before the Supreme Court during his time in the Office. In addition to his work on his own cases (including six oral arguments before the Court), he was particularly well known as a thoughtful and incisive participant in the Office's moot courts, helping to prepare other attorneys for their oral arguments. Although his questions were sharp, his tone never was. Whatever the subject matter, Mr. Heytens reliably spotted the weak points in both sides' arguments and gave clear-headed, objective advice about how best to present the government's position.

Some of us have also been involved in Supreme Court cases that Mr. Heytens has handled either through the UVA Supreme Court clinic or as Solicitor General of Virginia. Whether we were aligned with or against him, we saw once again that he is a truly excellent lawyer.

To be an excellent judge, of course, he must be more than an excellent lawyer. His performance in the Office of the Solicitor General gives us reason to be confident that he will successfully transition from advocate and scholar to judge. Assistants to the Solicitor General are nonpolitical career staff, hired for their legal excellence and charged with representing the United States before the Supreme Court irrespective of the administration or political party in office. The job requires attorneys to set aside their personal views, work collaboratively with others throughout the government, and advance the interests of the United States. During his service as an Assistant, Mr. Heytens consistently conducted himself in accordance with the nonpartisan and collegial traditions of the Office.

We enthusiastically support Mr. Heytens's confirmation to the Fourth Circuit.

Sincerely,

Paul D. Clement
Solicitor General (2005-2008)
Principal Deputy Solicitor General (2001-2004)

Gregory G. Garre
Solicitor General (2008-2009)
Principal Deputy Solicitor General (2005-2008)
Assistant to the Solicitor General (2000-2004)

Theodore B. Olson
Solicitor General (2001-2004)

Neal Kumar Katyal
Acting Solicitor General (2010-2011)
Principal Deputy Solicitor General (2009-2010)

Daryl Joseffer
Principal Deputy Solicitor General (2008-2009)
Assistant to the Solicitor General (2004-2008)

Michael R. Dreeben
Deputy Solicitor General (1994-2019)
Assistant to the Solicitor General (1988-1994)

Thomas G. Hungar
Deputy Solicitor General (2003-2008)
Assistant to the Solicitor General (1992-1994)

Lisa S. Blatt
Assistant to the Solicitor General (1996-2009)

Edward C. DuMont
Assistant to the Solicitor General (1992-1996, 1997-2001)

John P. Elwood
Assistant to the Solicitor General (2002-2005)

James A. Feldman
Assistant to the Solicitor General (1989-2006)

Irving L. Gornstein
Assistant to the Solicitor General (1994-2007)

Douglas H. Hallward-Driemeier
Assistant to the Solicitor General (2004-2009)

Benjamin J. Horwich
Assistant to the Solicitor General (2009-2014)

William M. Jay
Assistant to the Solicitor General (2007-2012)

Jeffrey A. Lamken
Assistant to the Solicitor General (1997-2003)

David A. O'Neil
Assistant to the Solicitor General (2008-2010)

Joseph R. Palmore
Assistant to the Solicitor General (2010-2014)

Nicole A. Saharsky
Assistant to the Solicitor General (2007-2017)

Lisa Hertzer Schertler
Assistant to the Solicitor General (2007-2009)

Pratik A. Shah
Assistant to the Solicitor General (2008-2013)

Melissa Arbus Sherry
Assistant to the Solicitor General (2009-2014)

Scott Keller
Bristow Fellow (2008-2009)

Matthew Krueger
Bristow Fellow (2007-2008)

Judson O. Littleton
Bristow Fellow (2009-2010)

Erin E. Murphy
Bristow Fellow (2007-2008)

Matthew Owen
Bristow Fellow (2009-2010)

Annie Owens
Bristow Fellow (2007-2008)

Matthew E. Price
Bristow Fellow (2007-2008)

July 22, 2021

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Nomination of Toby Heytens as Circuit Judge,
United States Court of Appeals for the Fourth Circuit

Dear Chair Durbin and Ranking Member Grassley:

We are more than 100 alumni of the University of Virginia School of Law, representing every graduating class that had the good fortune to be taught by Toby Heytens.[1] We have followed many different paths since graduating from law school, pursuing careers in private practice, government service, and other forms of public service. And our positions on politics and judicial philosophy vary widely—a hallmark of the Virginia Law alumni network, which is illustrated by the diversity of many of our own clerkship experiences. We all write to you and the Members of the Committee to support Toby Heytens's nomination to the United States Court of Appeals for the Fourth Circuit, because we know him to be eminently qualified as a public servant, an intellect, and a mentor to young legal minds.

As the Congressional Research Service has explained, a judge requires "a personality that is even-handed, unbiased, impartial, courteous yet firm, and dedicated to a process, not a result." As a professor, Toby has taught countless students and mentees to revere and respect the legal process; and as a professor and practitioner, he's worked to better it.

Toby's legal acumen is simply unparalleled. When presented with a difficult legal question, Toby rockets through the controlling doctrines and case law, always bearing in mind the tangible, real-world impacts a conclusion could have on parties now and in the future. He taught his students to do the same, challenging our assumptions and encouraging us to critically consider the consequences of adopting certain positions. Despite his fierce intelligence, Toby conducts himself with a humility and graciousness uncommon in most elite lawyers. We know that elevation to the bench will not change that, and it's that same approach that will ensure each party before him will receive the same even-handed, unbiased, impartial consideration.

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[1] This letter contains signatures of students from the graduating classes of 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, and 2009. Because Professor Heytens was on leave to work in the Office of the Solicitor General from the summer of 2007 until the summer of 2010, he did not teach any students that graduated in the class of 2010.

Toby has dedicated his career to improving the legal process and has inspired countless others to do the same. As a professor, his scholarship has challenged inequitable procedural practices; and as a practitioner, he's thoughtfully and meticulously advanced arguments before state and federal courts to right past wrongs and ensure equal justice under the law. He would undoubtedly bring that same commitment to justice to the bench.

We have known Toby as a law professor, a trusted mentor, a dedicated coach, and a steadfast friend. Although his title has changed through the years, his commitment to the principled administration of the legal process remains unchanged. We sincerely hope he will garner your support for the Fourth Circuit vacancy. You will find no better candidate.

Respectfully,

Megan C. Keenan
Virginia Law, Class of 2018

Francisco Fernandez del Castillo
Virginia Law, Class of 2018

W. Brock Phillips
Virginia Law, Class of 2018

Katherine D. Profumo
Associate, Troutman Pepper
Virginia Law, Class of 2018

Cory Sagduyu
Children's Program Attorney, Human Rights Initiative of North Texas
Virginia Law, Class of 2018

Julianne Toia
Virginia Law, Class of 2018

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Virginia Law, Class of 2018

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Kendall Burchard
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Rebecca Sciarrino
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Jennifer Davidson
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J. Sterling Moore
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Ethan Sachs
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July 27, 2021

Senator Richard Durbin, Chair
Committee on the Judiciary
United States Senate
224 Dirksen
Washington, D.C. 20510

Senator Durbin:

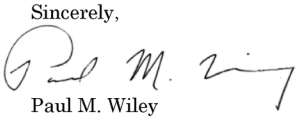
I write in support of Toby Heytens' nomination to a seat on the U.S. Court of Appeals for the Fourth Circuit.

I have known Toby for nearly fifteen years, from the time I joined the collegiate mock trial program at the University of Virginia. You will have received letters of support from across the mock trial community, including other former competitors Toby trained, coaches and students his teams competed against, and American Mock Trial Association board members he served with. Their experiences with Toby match my own—his mentorship, his generosity with his time and attention, and his incisive brilliance; I echo their words and sentiments in their entirety.

My experience differs only in the regard that, outside of mock trial, I have litigated both with and against Toby in his role as Virginia's Solicitor General. What I saw of him operating in that role exemplifies why he is such an extraordinary choice for the bench. The law is not an abstraction to Toby: he is conscious of the tangible ways in which laws and judicial decisions and legal strategies affect real lives. That clear-eyed view of the world is an exceptional gift when paired with Toby's intelligence and compassion.

Toby will be a tremendous addition to the Fourth Circuit. As a lifelong Virginian and practicing member of the Virginia bar, I am overjoyed at the thought of Toby occupying a seat that shapes the legal landscape in Virginia. I look forward to seeing him advanced by your Committee and confirmed by the full Senate.

Sincerely,



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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Toby J. Heytens to the United States Court of Appeals for the Fourth Circuit

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Toby Heytens, who has been nominated by the President to the United States Court of Appeals for the Fourth Circuit. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Mr. Heytens is **"Well Qualified"** to serve on the United States Court of Appeals for the Fourth Circuit.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Toby J. Heytens (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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Sheriff's Office

Administrative Office
Detention Center
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Alexandria, VA 22314
703.746.4114

Dana Lawhorne
Sheriff

Courthouse
Judicial - Legal Process
520 King Street, Suite 308
Alexandria, VA 22314
703.746.4120

July 20, 2021

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley,

I am writing this letter in support of the Honorable Michael S. Nachmanoff for the position of United States District Judge for the Eastern District of Virginia. I have known Michael for more than fifteen years, and during that time I have come to admire his dedication to his clients and his staff, his fidelity to the law and to the Constitution, and his deep understanding of public safety and law enforcement issues. We first met in 2005 after I was elected Sheriff of the City of Alexandria. In that capacity, I have worked closely with Michael in his role as Federal Public Defender and, for the past five years, as United States Magistrate Judge. Over this time, Michael and I have forged a relationship of trust and respect. We have found ways to collaborate productively on issues of mutual importance to the federal court and the Alexandria Detention Center (ADC). But beyond our professional relationship, we have also become friends. Based upon my judgment of his character, intellect, and devotion to the Eastern District of Virginia, I strongly endorse his candidacy for the position of District Judge.

As Federal Public Defender, Michael was an effective and energetic advocate for his office and its clients. The prisoner population at the Alexandria Detention Center is almost evenly split between local inmates and federal detainees.

The majority of federal inmates held at the ADC are represented by the Office of the Federal Public Defender.

For this reason, assistant federal public defenders and staff are frequent visitors to the jail. Shortly after I became Sheriff, Michael approached me to discuss whether I would be willing to permit his attorneys and staff to undergo background checks and receive credentials that would allow them to enter the housing units to meet directly with their clients in the jail. The opportunity to enter the jail without an escort and meet in the cell block with clients provides an enormous advantage to federal defender staff, who can then use their time more efficiently at the A DC. Despite initial reservations about giving federal defenders badge access to the jail, I agreed to this arrangement, which also benefitted my staff by freeing up attorney interview rooms for CJA attorneys and private counsel. I did so based upon Michael 's assurance that he would take personal responsibility for the conduct of his employees and ensure that they followed the strict security protocols required by the ADC. Fifteen years later, that agreement remains in place and has been a win-win for the jail and for the federal defenders. Most importantly, it has been a benefit for the inmates, who are able to communicate with their counsel faster and more frequently, which, quite frankly, makes them more likely to listen to our deputies and follow the rules.

This cooperative and problem-solving attitude has continued since Michael assumed the bench as a magistrate judge in 2015. Although we interact less frequently since he became a judge, Michael and I once again have worked together closely to address the enormous challenges posed by the pandemic. When it became clear in early March that transporting inmates to and from the federal courthouse and permitting in-person attorney/client meetings in the jail would endanger inmates, staff, and court personnel and potentially spread the virus, we had to very quickly find ways to both protect the health of the inmate population and provide them with meaningful access to counsel and the courts.

Michael played a critical role in coordinating with our senior staff, his fellow judges, the federal defenders, the U.S. Attorney's Office, and the IT staff in the Clerk's Office to develop a video-conference solution that allowed court hearings to go forward. He was also concerned about defense counsel's ability to communicate with clients, so we expanded attorney/client telephone lines and provided attorneys with the ability to videoconference with their clients in an effort to address those concerns. Michael was always willing to consider the impact of the pandemic on the deputies and staff at the jail as we discussed how best to keep the court functioning during this unprecedented public health crisis. His thoughtful and considerate approach with regard to all members of the criminal justice system and court family was appreciated by everyone.

Finally, Michael has a sense of humor and does not take himself too seriously. I have been known to crack a joke or two, and Michael and I have shared many laughs. But ultimately, for those of us who have devoted our lives to public service and law enforcement, I strongly believe that the best judges are those who can balance the need for justice with compassion and public safety. They must understand what it is like to spend time in a jail (even if only as a visitor) before assuming the heavy burden of imposing punishment on others.

I am confident that Michael has that experience and possesses those qualities which make him an excellent candidate, and I am pleased to endorse him for the position of District Judge in the Eastern District of Virginia.

Sincerely,

Dana Lawhorne,
Sheriff

July 21, 2021

The Honorable Richard Durbin
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nominations of Patricia Giles and Michael Nachmanoff to the United States District Court for the Eastern District of Virginia.

We each have been privileged to serve as the United States Attorney in that district. Collectively, we also held other line and leadership positions in state and federal law enforcement. We are deeply committed to the principles of fundamental fairness that animate the work of the Department of Justice.

We know Patricia and Michael well and in various ways – as friends, colleagues, and professional adversaries. We can attest, through personal knowledge and by reputation, that they are thoughtful, intelligent, civil, decent, and kind. They are people of high character and strong emotional intelligence who consistently demonstrate in their professional and personal lives characteristics that are fundamental to our system of justice: integrity, independence, and fidelity to the rule of law.

The Eastern District of Virginia has a long history of exemplary service from its many quarters – federal prosecutors, federal defenders, and the bench. Patricia (a prosecutor) and Michael (a defender) are extraordinarily well qualified to serve as United States District Court Judges, and we hope that they will each be confirmed to that post. We are confident that they will continue a proud tradition of service to the district and to the nation, and that they will meet their obligations – as they always have – with honor and distinction.

Respectfully,

Bill Cummings (1975-1979)
Richard Cullen (1991-1993)
Paul McNulty (2001-2006)
Chuck Rosenberg (2006-2008)
Dana Boente (2008-2009; 2013-2018)
Neil MacBride (2009-2013)
Zach Terwilliger (2018-2021)

SUSAN R. PODOLSKY
ATTORNEY AT LAW

July 26, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nominations of Michael S. Nachmanoff and Patricia Tolliver Giles to the United States District Court for the Eastern District of Virginia.

We are a diverse group of lawyers, practicing in a wide variety of different areas and representing a range of clients. What we share in common is a keen interest in continuing the strong contribution of the Eastern District of Virginia to the federal judiciary and its important role in our constitutional system.

That interest unites us in strongly and uniformly endorsing Patricia and Michael for the two judicial vacancies in the Alexandria Division of the Eastern District of Virginia.

We know Patricia and Michael through various means—as personal friends, professional colleagues, and/or professional adversaries. Both are extraordinarily well qualified to be District Judges and possess the qualities and characteristics required to properly discharge their judicial obligations. In particular, both are highly intelligent, thoughtful, compassionate, strong and fair-minded. Both are willing to work hard to reach fair and reasonable resolutions. And both are people of integrity and high character.

We strongly and respectfully recommend your swift confirmation of their nominations.

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SPODOLSKY@PODOLSKYLAW.COM

We appreciate your consideration and are available to answer any questions or provide additional information.

Very truly yours,

Susan R. Podolsky

Michael L. Whitlock
Charles B. Molster, III
Bill Stanley
Damon W.D. Wright
Nina J. Ginsberg
Edward B. MacMahon, Jr.
Kimberly Ang
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July 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michael S. Nachmanoff to the United States District Court for the Eastern District of Virginia

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Michael Nachmanoff, who has been nominated by the President to the United States District Court for the Eastern District of Virginia. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Nachmanoff is **"Well Qualified"** to serve on the United States District Court for the Eastern District of Virginia

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
The Honorable Michael S. Nachmanoff (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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July 05, 2021

The Honorable Richard J. Durbin
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United States Senate
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Washington, DC 20510

The Honorable Charles E Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building,
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

I am honored to submit this letter of support for the application of Attorney Sarala Nagala for a seat on the Federal District Court.

Being community leader within the Sikh community, and serving my city as Board of Education Member, I had opportunity to work closely with Attorney Nagala. I have always admired her leadership while she served United States Attorney's Office for the District of Connecticut for the past many years.

Education is the key to bring end to hate crimes and specially for vulnerable communities like Sikhs and Muslim who are usually misunderstood. Post 9/11 these communities have been targeted for hate crime but I was glad to see that Attorney Nagala clearly understood the root cause of these hate crimes. She was very helpful to build a better understanding between law enforcement agencies and minority communities in Connecticut.

Being one of the trainer in AMS Program which helped educate almost 1200 police officers about facts on Arabs,Muslim and Sikhs, I must say Attorney Nagala was very helpful in organizing these cultural competency training sessions at various police departments around the state.

Her friendly nature , ability to connect with people and understanding people's point of view has surely helped her succeed. Her participation and outreach within other communities like attending events in Sikh places of prayer (Gurudwara) surely created a comfort level within our Sikh community and Government agencies.

Attorney Nagala organized anti-bullying workshops and spearhead "Protecting Your House of Worship" trainings for synagogues, mosques, and gurdwaras. Through this initiative, Attorney Nagala and her team conducted security assessments of religious facilities and proposed security plans in the event of domestic terrorist attacks.

Myself and my community highly recommend Attorney Nagala's to be confirmed to the federal judiciary. If you have any questions regarding this letter please do not hesitate to contact me at any time.

Yours Sincerely,

Swaranjit Singh Khalsa
Member: Board of Education
City of Norwich,Connecticut
Representative- Sikh Community of Connecticut
Cell:(757)291-5211

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Presenter - D.O.J
Sikh Community Representative (Southington, CT)
Ph - (860) 461-8119

Amarjit Singh
Presenter - D.O.J
Sikh Community Representative (Stamford, CT)
Ph - (203) 219-3685

SENATOR SAUD ANWAR
DEPUTY PRESIDENT PRO TEMPORE

Legislative Office Building
Room 2100
Hartford, CT 06106-1591
Tel. 860-240-0347
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State of Connecticut
SENATE
Third District

Chair
Children Committee
Vice Chair
Housing Committee
Insurance & Real Estate Committee
Public Health Committee
Member
Appropriations Committee
Judiciary Committee
Planning & Development Committee

July 05, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building,
Washington, DC 20510

The Honorable Charles E Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

I am honored to submit this letter of support for the application of Attorney Sarala Nagala for a seat on the Federal District Court.

In my capacity as a Connecticut state Senator, community leader within the American Muslim community, and physician, I have had the good fortune of working closely with Attorney Nagala and seeing her leadership in action as she has served with the United States Attorney's Office for the District of Connecticut for the past many years.

While working with Attorney Nagala, I have been impressed and appreciative of her efforts to build a better understanding between law enforcement agencies and minority communities in Connecticut. Through her calm, impartial, and professional demeanor, Attorney Nagala worked tirelessly to help rebuild the trust between these communities and their government, which had been eroding for some time as a result of some post 9/11 policies.

While working for the Department of Justice, Attorney Nagala worked on a multitude of important cases and significant office initiatives to this effect. For example, Attorney Nagala was instrumental in the prosecution of the Baitul Aman mosque shooter. This domestic terrorist attack was deeply concerning to the Muslim community in Connecticut and demonstrated how Islamophobia was reaching a boiling point in the United States. As part of this case and beyond, Attorney Nagala organized anti-bullying workshops and spearhead "Protecting Your House of Worship" trainings for synagogues, mosques, and gurdwaras. Through this initiative, Attorney Nagala and her team conducted security assessments of religious facilities and proposed security plans in the event of domestic terrorist attacks like the one that occurred at the Baitul Aman Mosque.

Attorney Nagala also helped organize training sessions at police departments around the state, encouraging cultural competency for law enforcement officers with a focus on educating officers about hate crimes laws and the major facets of Islam and Sikhism. More than 1,200 police officers were trained

through these efforts. I know this firsthand, as I was one of the trainers brought on board to assist with these efforts.

As a physician practicing in the State of Connecticut, I was also deeply impressed by Attorney Nagala service on the U.S. Attorney's Outreach Committee, which organized conferences on opioid overdose deaths – an issue which has affected hundreds of Connecticut families over the years.

I believe that Attorney Nagala draws strength from her life experiences, as well as from her background. Her parents emigrated from India in the late 1970s and took medical residencies in rural North Dakota. Her family settled in Oakes, a town of about 1800 people that was critically underserved in medical care. Her family was the only minority family in the town for quite some time. As such, she grew up with a keen awareness of how it feels to be considered "different." In my view, this understanding and awareness if crucially needed on the federal judiciary.

Her stellar record while working at the US Attorney office should be yet another testimony to her capacity, depth and breadth of experience and commitment. She served as Hate Crimes Coordinator and Human Trafficking Coordinator. She saved lives via sex trafficking trials. Atty. Nagala has also served as the Outreach Committee Chairperson. She has tried five cases to guilty verdicts including wire fraud phishing scheme, child sex trafficking, and narcotics cases.

In the strongest terms possible, I recommend Attorney Nagala's to be confirmed to the federal judiciary. I know that Attorney Nagala has a deep sense of respect for what our judicial officers do to advance the equal administration of justice. I also feel that diversity of experience and background is especially important on the federal bench, and I believe she would be an ideal person to serve our state and nation this way.

Should you have any questions regarding this letter please do not hesitate to contact me at any time.

Sincerely,

Senator Saud Anwar

Mona R. Shah
Executive Director

EXECUTIVE COMMITTEE

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President
SABA Metro St. Louis

Tara Mythri Raghavan
President-Elect
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VP – Professional Development
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saba
SOUTH ASIAN BAR ASSOCIATION OF NORTH AMERICA

Supporting the South Asian legal community with a trusted forum for professional growth and development while promoting civil rights and access to justice for the South Asian community

July 16, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Endorsement of Sarala V. Nagala as United States District Judge for the District of Connecticut

Dear Honorable Richard J. Durbin and Honorable Charles E. Grassley:

The South Asian Bar Association of North America ("SABA North America"), the umbrella organization for 29 local chapters across the United States and Canada, writes in enthusiastic support of the historic nomination of Sarala V. Nagala to serve as a United States District Judge for the District of Connecticut. If confirmed, Ms. Nagala will be the first person of South Asian descent to be appointed to the United States District Court for the District of Connecticut.

SABA North America represents the rapidly growing South Asian legal community across North America. The organization promotes the professional growth and advancement of attorneys of South Asian descent and strives to protect the rights and liberties of the South Asian community. In light of its mission and vision, SABA North America recognizes a critical need for greater participation by South Asian-Americans in the federal judiciary. Through the appointment of Ms. Nagala as well as other highly qualified South Asians to federal courts nationwide, significant progress towards fulfilling that need can be achieved.

Ms. Nagala's first-generation upbringing, impressive academic and professional credentials, dedication to public service, and unwavering commitment to protect the most vulnerable members of her community exceptionally qualify her for the position of United States District Court Judge. Not only will Ms. Nagala bring critical diversity of experiences and background to the federal bench, she will undoubtedly serve with a strong sense of fairness, compassion, and humility.

Like many other members of the South Asian legal community in the United States, Ms. Nagala is a first-generation American. Her parents emigrated from India to rural North Dakota in the late 1970s to pursue medical residencies. The Nagalas eventually settled in Oakes, a town of only 1800 people, where they served the community by providing critical medical care. Through their example, the Nagalas necessarily sowed the seeds for Ms. Nagala's dedication to public service. The Nagalas were the only minority family in their town for a long time. As such, Ms.

Nagala grew up knowing that she was different from the largely homogenous population around her. This unique upbringing provided Ms. Nagala with an appreciation for diversity that will translate into much needed compassion for the diverse population who will come before her in the Courtroom.

Ms. Nagala has accumulated a number of academic credentials that have set her up for her future in public service. Given the limited opportunities available in North Dakota, Ms. Nagala went far west to attend Stanford University, where she obtained a Bachelor's degree in Public Policy with distinction. Ms. Nagala then attended University of California, Berkeley School of Law, where she was a Member of the *California Law Review* and was a Symposium Editor of the *Berkeley Technology Law Journal*. Ms. Nagala graduated from Berkeley in 2008 as a member of Order of the Coif.

Ms. Nagala's storied professional credentials ensure that she will be true asset to the bench. For example, after graduating law school, she clerked with the Honorable Susan P. Graber of the U.S. Court of Appeals for the Ninth Circuit. It was during this clerkship that Ms. Nagala first learned that judges should be thoughtful, deliberate, and most importantly fair. Ms. Nagala has followed these same principles throughout her legal career.

Following the clerkship, Ms. Nagala joined Munger, Tolles & Olson LLP, a San Francisco law firm. During her short tenure at the law firm, Ms. Nagala worked on a number of federal and state trial court complex commercial litigation matters. She also had the unique opportunity to work with ACLU lawyers on a pro bono challenge of the City of Orange Police Department's and Orange County District Attorney's practice of filing for "gang injunctions," which precluded alleged gang members from conducting everyday activities. After trial, the federal district court judge found in favor of Ms. Nagala's clients, finding that their due process rights were violated. This earned Ms. Nagala ACLU's prestigious Courageous Advocacy Award. In this case among others, Ms. Nagala gained critical skills she needed to pursue her future in public service.

In 2012, Ms. Nagala was appointed as an Assistant United States Attorney for the District of Connecticut. During her nine-year tenure as a federal prosecutor, Ms. Nagala has managed numerous investigations and prosecutions for violations of federal criminal laws pertaining to human trafficking, hate crimes, child exploitation, fraud, and identity theft. Ms. Nagala has also tried five cases to guilty verdict including a number of high-profile sex trafficking and hate crime cases. Notably, she was involved in the prosecution of Ted Hakey who fired shots from a high-powered rifle through the Baitul Aman Mosque in Connecticut in November 2015. Remarkably, Mr. Hakey apologized to leaders of the Mosque for what amounted to ignorance and ultimately pled guilty to a civil rights felony. Ms. Nagala was also involved in a significant sex trafficking case in 2018 involving a victim who did not

view herself as one. Ms. Nagala recognized the level of courage that was required for this victim to come forward and effectively presented evidence in support of the case.

Ms. Nagala's work goes far beyond investigations and prosecutions. She has also taken it upon herself to educate her community. Ms. Nagala has trained hundreds of law enforcement officials about the victim-centered approach to human trafficking investigations and prosecutions. She has organized "Protecting Your House of Worship" trainings for synagogues, mosques, and gurudwaras. Ms. Nagala has also organized training sessions at police departments about cultural competency, with a focus on educating officers on hate crimes laws and facets of Islam and Sikhism. Ms. Nagala has also been instrumental in bringing anti-bullying programs to minority school children. Through prosecution and these initiatives, Ms. Nagala has become a well-known champion of the most vulnerable members of her community, namely victims of child sex trafficking and hate crimes. Ms. Nagala's compassion and humility will be invaluable for those she will see on the bench.

Ms. Nagala's appointment will be profoundly meaningful to the growing South Asian legal community across North America. Her experiences and background mirror many of those in our community. There is no question that her exceptional credentials, long-standing dedication to public service, and unwavering commitment to vulnerable populations ensure that she will serve with fairness, compassion and humility.

For all of these reasons, SABA North America proudly and enthusiastically supports Ms. Nagala for appointment to the federal judiciary in Connecticut.

Sincerely,

Samir Mehta, President

Tara M. Raghavan, President-Elect

July 19, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington D.C. 20510

Re: Nomination of Sarala V. Nagala for District Court of Connecticut

Dear Chairman Durbin and Ranking Member Grassley:

We are writing to voice our strong support for the nomination of our former colleague Sarala V. Nagala to the federal district court of Connecticut and to encourage her confirmation. We are a group of partners and former partners at Munger, Tolles & Olson LLP who were familiar with Sarala's work and contributions to the firm when she was a litigation associate at our firm from September 2009 to July 2012.

We come from a variety of backgrounds and perspectives but are united in our agreement that Sarala would make an excellent federal district court judge. Sarala spent the first three years of her post-clerkship legal career with us, working as a civil litigator before joining the United States Attorney's office. During her time with us, she demonstrated that she is an extremely intelligent and disciplined thinker, an excellent colleague who approaches problems and relationships with a calm and measured demeanor and strong spirit of cooperation, and a highly competent and ethical member of the legal profession.

Sarala joined our San Francisco office following her clerkship with Judge Susan B. Graber on the Ninth Circuit. While she was with our firm, she handled a variety of complex civil litigation matters for clients in the banking, technology and entertainment industries. Our firm prides itself on providing associates with early responsibility, and Sarala thrived in that environment. She worked side by side with partners on her matters, doing everything from developing overall case strategy, managing discovery and researching key issues to taking depositions, working with experts, and drafting important dispositive motions. She quickly emerged as a thought leader on her cases, showing initiative and creativity in solving our clients' hardest problems. She also demonstrated maturity and judgment beyond her years, bringing to her work a sophisticated, nuanced approach more commonly seen in far more experienced attorneys. Sarala also distinguished herself in several large complex matters by mastering

massive and complicated factual records as needed to litigate and resolve these matters. Throughout her time with us, Sarala distinguished herself as a balanced, thoughtful attorney who carefully considered issues and took seriously her representation of clients and her understanding of the law as it affected those clients.

Sarala also had an active pro bono practice while working at Munger Tolles. One of her biggest pro bono matters was *Vasquez v. Rackauckas* in the Central District of California, where she assisted in the representation of a class of individuals alongside the ACLU in a procedural due process challenge to the enforcement of a permanent injunction issued against an alleged gang and its members in Orange County. Sarala was a member of a trial team that conducted a two week bench trial, where Sarala examined witnesses and worked on significant pre- and post-trial motions. Sarala demonstrated on this matter that she can be a tireless and passionate advocate, that she is cheerful and creative even under the pressures of trial, that she is compassionate, and that she has a brilliant legal mind.

Sarala contributed not just to our clients, but to our firm. She was an active member of our diversity committee, and it became clear that promoting and supporting diversity in the legal profession was a critical priority for her. To that end, she organized and participated in panel presentations to diverse law school students at various law school campuses to encourage diverse attorneys to consider law firms, and our firm in particular, upon graduation. She also created a "cupcakes and conversation" program at her alma mater, Berkeley Law School, to bring together diverse law school students for "off the record" conversations about law firm life with the goal of increasing the pipeline of diverse lawyers entering the profession. She was excellent at recruiting and law school outreach because she had such an approachable, calm, and honest demeanor. Law students trusted her to guide them.

Based on our extensive experience working with Sarala, we believe that she adheres to the highest ethical standards and is committed to following the law. She has a deep respect for the judicial system and the role that lawyers, lower courts, and appellate courts play in that system. In light of all the above, we strongly believe that, as a federal district court judge, Sarala would follow applicable legal precedents, treat litigants and counsel with respect, manage her courtroom effectively, and make a longstanding and positive contribution to the judiciary and the legal system.

We were proud to call Sarala our colleague and to have been one step on her impressive career path. It has been a privilege to watch her advance to great success as a federal prosecutor in Connecticut. Based on our experiences with Sarala, we believe that she would be an excellent federal district court judge and we enthusiastically support her nomination.

Respectfully,

Carolyn Hoecker Luedtke
Munger, Tolles & Olson LLP

Kristin A. Linsley
Gibson Dunn & Crutcher LLP

Ronald L. Olson
Munger, Tolles & Olson LLP

Brad D. Brian
Munger, Tolles & Olson LLP

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Gregory P. Stone
Munger, Tolles & Olson LLP

Bart H. Williams
Proskauer Rose LLP

Hailyn J. Chen
Munger, Tolles & Olson LLP

Miriam Kim
Munger, Tolles & Olson LLP

Richard C. St. John
Munger, Tolles & Olson LLP

Malcolm A. Heinicke
Munger, Tolles & Olson LLP

Laura Smolowe
Munger, Tolles & Olson LLP

Bethany W. Kristovich
Munger, Tolles & Olson LLP

Kelly M. Klaus
Munger, Tolles & Olson LLP

Melinda LeMoine
Director, Content Litigation, Netflix

Tamerlin J. Godley
Paul Hastings LLP

Terry E. Sanchez
Munger, Tolles & Olson LLP

Katherine M. Forster
Munger, Tolles & Olson LLP

Robert K. Johnson
Munger, Tolles & Olson LLP

Marc T.G. Dworsky
Reid Collins & Tsai LLP

Joseph Y. Ybarra
Halpern, May, Ybarra, Gelberg LLP

Michael J. O'Sullivan
General Counsel, Snap Inc.

Rosemarie C. Ring
Munger, Tolles & Olson LLP

Jerome C. Roth
Munger, Tolles & Olson LLP

Rohit Singla
Munger, Tolles & Olson LLP

Jacob Kreilkamp
Munger, Tolles & Olson LLP

Blanca Fromm Young
Munger, Tolles & Olson LLP

David H. Fry
Munger, Tolles & Olson LLP

Burton Gross
Deputy General Counsel
California Independent System Operator Corp

Gregory Phillips
Retired, Munger, Tolles & Olson LLP

George M. Garvey
Munger, Tolles & Olson LLP

Laura K. Lin
Munger, Tolles & Olson LLP

Bryan H. Heckenlively
Munger, Tolles & Olson LLP

Kyle W. Mach
Munger, Tolles & Olson LLP

Robert L. Dell Angelo
Munger, Tolles & Olson LLP

Margaret G. Maraschino
Munger, Tolles & Olson LLP

Glenn D. Pomerantz
Munger, Tolles & Olson LLP

Bradley S. Phillips
Munger, Tolles & Olson LLP

Joseph D. Lee
Munger, Tolles & Olson LLP

Grant Davis-Denny
Munger, Tolles & Olson LLP

Patrick J. Cafferty, Jr.
Munger, Tolles & Olson LLP

Jonathan H. Blavin
Munger, Tolles & Olson LLP

Judith T. Kitano
Munger, Tolles & Olson LLP

William D. Temko
Munger, Tolles & Olson LLP

Achyut J. Phadke
Munger, Tolles & Olson LLP

Stuart N. Senator
Munger, Tolles & Olson LLP

Jeffrey L. Bleich
Chief Legal Officer, Cruise

July 19, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nomination of Sarala Vidya Nagala to the United States District Court for of the District of Connecticut.

Each of us know Sarala as either a colleague or an adversary from her distinguished career at the U.S. Attorney's Office for the District of Connecticut. Some of us are former federal prosecutors who worked closely with Sarala during her tenure in that Office. Twenty of us are criminal defense attorneys who represented individual defendants, witnesses and victims in cases that Sarala investigated, prosecuted or supervised. We have all had the opportunity to observe first-hand Sarala's integrity, intellect and excellent judgment. Throughout her career, she has consistently demonstrated herself to be a thoughtful, balanced and highly ethical prosecutor who is solely dedicated to the fair and impartial administration of justice. Although we come from different backgrounds and perspectives, we all believe that Sarala will make an exceptional district court judge.

Sarala is eminently qualified to serve on the U.S. District Court. She excelled at University of California, Berkeley, School of Law, graduating near the top of her class and serving on the California Law Review, and is a Phi Beta Kappa graduate from Stanford University, where she received the Outstanding Public Policy Student award. Early in her career, she served as a law clerk for the Honorable Susan P. Graber, a widely respected judge on the Ninth Circuit Court of Appeals. At the San Francisco office of the law firm Munger, Tolles & Olson LLP, Sarala worked on complex commercial litigation matters in federal and state court and a successful civil rights trial, and was recognized by the ACLU for her pro bono work.

As a federal prosecutor in Connecticut for the last nine years, Sarala's adversaries found her to be a fair and open-minded advocate who effectively reached just results. Responsible for a large number and variety of cases, she focused on human trafficking, child exploitation, hate

crimes and financial fraud. She has tried five cases to verdict, and briefed and argued multiple cases before the U.S. Court of Appeals for the Second Circuit. As the Deputy Chief of the Major Crimes Unit, she has supervised the work of other prosecutors and has served in numerous leadership roles in the Office. For many years, she has been the primary contact for particularly sensitive investigations involving trafficking, hate crimes and international matters. She has also played a critical role in the hiring and training of new prosecutors, and received a prestigious national award from the Department of Justice for a complex Romanian computer fraud prosecution.

Sarala's parents, first generation immigrants, are doctors who have dedicated their lives to the underserved in rural communities in North Dakota. As a prosecutor, Sarala similarly devoted herself to impactful community outreach and engagement, demonstrating her commitment to all who live in Connecticut. She coordinated the training of over 1,200 police officers in cultural competency, organized "Protecting Your House of Worship" events for religious groups, and educated hundreds of police, social workers, hospital staff, educators and community members about human trafficking. These initiatives, which Sarala often spearheaded single-handedly, were highly effective in improving the reach and impact of law enforcement in the State.

We are confident Sarala will serve with distinction and enthusiastically support her nomination to the U.S. District Court for the District of Connecticut.

Respectfully submitted,

Vanessa Roberts Avery
Liam Brennan
Pat Brown
Todd Bussert
Jamie Cowdery
Deirdre M. Daly
Tracy Dayton
Christopher F. Droney
Felice Duffy
Jonathan Einhorn
David Fein
Audrey Felsen
Jonathan Freimann
Michael Gustafson
Robert Kappes
Jeff Kestenband
Keith King
W. Theodore Koch III
Bruce Koffsky
Matthew Maddox
Christopher M. Mattei
Paul McConnell
Doug Morabito
Ndidi Moses
Allison Near
Bill Paetzold
Lisa E. Perkins
Bethany Phillips
Alina Reynolds
Stephen Reynolds
Frank Riccio
Shelley Sadin
Richard Schechter
Justin Smith
Jessica Soufer
Brian E. Spears
Kate Stith
Paul Thomas
Stan Twardy
Sharmese Walcott
David Wenc

July 20, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Letter of Support for Sarala Vidya Nagala for the U.S. District Court for the District of Connecticut

Dear Chairman Durbin and Ranking Member Grassley:

The undersigned affinity bar associations extend their strong support for the historic nomination of Sarala Vidya Nagala to serve on the U.S. District Court for the District of Connecticut. If confirmed, Ms. Nagala will be the first person of Asian descent, and specifically South Asian descent, to serve as an Article III judge in the District of Connecticut.

- The **Connecticut Asian Pacific American Bar Association ("CAPABA")** is the only association geared towards Asian Pacific American attorneys in Connecticut. CAPABA's mission is to support Asian Pacific American attorneys and communities and those interested in Asian Pacific American legal issues throughout the state of Connecticut.
- The **George W. Crawford Black Bar Association ("Crawford")** was founded in 1977 and is a volunteer state-wide organization of attorneys, judges, and law students in the State of Connecticut. Crawford represents the collective body of Black attorneys in Connecticut, including both the criminal and civil bar, public and private sector employees, and spanning across law firm, corporate and non-profit affiliations.
- The **South Asian Bar Association of Connecticut ("SABAC")** was formed in 2004 to serve as a resource to South Asian lawyers and law students for growth, professional development, networking, and community outreach. SABAC has made significant strides in advancing diversity and inclusion in the Connecticut legal community in the fifteen years since its founding.

Collectively, our organizations provide the foremost voices for the minority legal community in the state of Connecticut.

Sarala Nagala has a stellar reputation as one of Connecticut's most accomplished public service attorneys through her experience both in the courtroom and in leading community outreach to underserved and victimized populations. She is known for being simultaneously gracious and authoritative, an ideal temperament for the federal bench.

Since 2016, Ms. Nagala has served with distinction as the Deputy Chief of the Major Crimes Unit of the United States Attorney's Office. She is also the USAO's Human Trafficking Coordinator, Hate Crimes Coordinator, International Coordinator, and Diversity Committee

Chairperson, which are not just titles she holds but roles she fulfills effectively and with obvious commitment to harnessing the power of building connection. She received her J.D. from the University of California, Berkeley School of Law (Boalt Hall) and her B.A. with distinction from Stanford University.

Ms. Nagala's parents immigrated to the United States in the late 1970's from India. They settled in North Dakota, where Ms. Nagala was born and raised. For many years, they were the only family of color in their town, and this immigrant experience gave Ms. Nagala a keen awareness of being different. Like many first-generation Americans, raised in dual cultures and a bilingual household, Ms. Nagala has firsthand experience navigating and successfully overcoming the challenges presented to her.

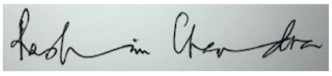
We believe that Ms. Nagala's background and record of achievement will make her a valuable member of the federal bench in this district. All who are served by that court, indeed, all of Connecticut's residents, will benefit from her service. The undersigned bar associations strongly support her nomination and swift confirmation by the Senate.

Sincerely yours,

Dan A. Brody
President, Connecticut Asian Pacific American Bar Association

Makana Ellis

Makana Ellis
President, George W. Crawford Black Bar Association



Rashmi Chandra
President, South Asian Bar Association of Connecticut

cc: The Honorable Richard Blumenthal
The Honorable Christopher Murphy

July 12, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **Letter of Support for Sarala Nagala for the U.S. District Court for the District of Columbia**

Dear Chairman Durbin and Ranking Member Grassley:

The National Asian Pacific American Bar Association (NAPABA) extends its strong support for the historic nomination of Sarala Nagala to serve on the U.S. District Court for the District of Connecticut. If confirmed, Ms. Nagala will be the first Asian Pacific American (APA) woman to serve as an Article III judge in the District of Connecticut.

NAPABA represents the interests of over 60,000 legal professionals and nearly 90 national, state, and local Asian Pacific American bar associations. NAPABA is a leader in addressing civil rights issues confronting Asian Pacific American communities. Through its national network, NAPABA provides a strong voice for increased diversity of the federal and state judiciaries, advocates for equal opportunity in the workplace, works to eliminate hate crimes and anti-immigrant sentiment, and promotes the professional development of people of all backgrounds in the legal profession.

Ms. Nagala currently serves as the Deputy Chief of the Major Crimes Unit at the United States Attorney's Office for the District of Connecticut, where she is responsible for overseeing prosecutions involving human trafficking, child exploitation, hate crimes, and government program fraud. She has also served as the District's Hate Crimes Coordinator. With nearly a decade of experience as a federal prosecutor, she is the recipient of numerous awards including the 2015 Director's Award for Superior Performance as a Criminal Assistant U.S. Attorney, and the 2018 District of Connecticut "Standing Tall" Award. She has also taught as a visiting clinical lecturer in law at Yale Law School.

Ms. Nagala's own compelling family history includes having doctor parents who immigrated from India and completed their medical residencies in North Dakota. They provided care for critically underserved areas, and this experience has inspired Ms. Nagala's strong commitment to justice and instilled in her a deep sense of personal responsibility to her community and a career dedicated to public service. Ms. Nagala is endorsed by NAPABA's affiliate, the Connecticut Asian Pacific American Bar Association, the sole association geared towards Asian Pacific American attorneys in the state.

Ms. Nagala is a graduate of Stanford University and the University of California Berkeley School of Law where she graduated Order of the Coif, and was a member of the *California Law Review*. Following law school, she clerked for the Honorable Judge Susan P. Graber on the United States Court of Appeals for the Ninth Circuit.

Sarala Nagala is well qualified to serve on the U.S. District Court for the District of Connecticut and NAPABA strongly supports her nomination and urges swift action by this committee and confirmation by the Senate.

Sincerely,

RADM A.B. Cruz III, USN (ret.)
President

July 22, 2021

U.S. Senate Committee on the Judiciary
c/o U.S. Senator Richard Blumenthal
303 Hart Senate Office Bldg.
Washington, D.C. 20510
EMAIL: David_Stoopler@judiciary-dem.senate.gov

Re: Letter in Support of the Nomination of **Sarala Nagala**
to the U.S. District Court for the District of Connecticut

Dear Chairman Durbin and Ranking Member Grassley:

We, the undersigned advocates who work in the anti-trafficking arena in Connecticut, write in support of the nomination and confirmation of Sarala Nagala to fill a judicial vacancy in the U.S. District Court for the District of Connecticut.

Most of us know Ms. Nagala through her work as an Assistant U.S. Attorney (AUSA) for the District of Connecticut and Deputy Chief of the Major Crimes Unit. Many of us also know her through her participation as a member of the Connecticut Bar Association's Committee on Human Trafficking.

It has been our pleasure to work with Deputy Chief Nagala over the years to combat human trafficking in our state. In her work prosecuting human traffickers as an AUSA, she has always come to the table with an appreciation of disparate interests of the various stakeholders—from the accused to the victim, from law enforcement officials to anti-trafficking advocates. In her role as a federal prosecutor, Deputy Chief Nagala has displayed an understanding of the nuances of human trafficking cases.

Whenever we have worked with Deputy Chief Nagala, she has been professional, diplomatic, and respectful, but also responsive and collaborative. She has always been willing to come to the table to discuss and work through challenges that inevitably arise in the course of investigating and prosecuting complex trafficking cases. If she is appointed to the federal bench, we believe that Deputy Chief Nagala will be ethical, fair, and just, and will work to ensure the rights of all parties who come before her. We have every expectation that as a judge, Deputy Chief Nagala will continue to exhibit all of these excellent qualities, and that they will serve her well on the bench.

Sincerely,

Alina Marquez Reynolds
General Counsel,
Grace Farms Foundation

Annmarie Boulay
CEO,
The Underground NE

Bill Wade
FBI Citizens Academy
Alumni Association

Jillian Gilchrest
State Representative,
Connecticut General
Assembly

Joette Katz
Assoc. Justice, Connecticut
Supreme Court (retired)
Commissioner, Department of
Children and Families (retired)

Leonela Cruz-Ahuatl
Project Rescue Director,
Connecticut Institute for
Refugees and Immigrants

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Jonathan Greenblatt

Deputy National Director
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ADL
CONNECTICUT

July 19, 2021

The Honorable Richard J. Durbin, Chairman
The Honorable Charles E. Grassley, Ranking Member
US Senate Committee on the Judiciary
Dirksen Senate Office Building, Office #224
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing to express my support for the nomination of Assistant US Attorney Sarala Nagala to the Federal District Court of the District of Connecticut.

I have had the privilege of getting to know and work with AUSA Nagala over the past nearly six years as part of my role as the head of the Anti-Defamation League's (ADL) Connecticut Regional Office.

ADL is a leading anti-hate organization, and our work involves combatting hate crimes, preventing and responding to extremist activity, building communal bonds of respect and educating residents on how to understand and confront bias and bigotry. To accomplish our goals, we work with law enforcement and other government and community leaders.

During her tenure at the US Attorney's office, AUSA Nagala has been instrumental in helping our shared community address these ills in many ways. My work with her makes it easy to unreservedly attest to Sarala's professionalism, empathy and humility.

Always mindful of her duties and role, AUSA Nagala has routinely searched for ways to engage with various communities. From working to plan and convene roundtables of inter-faith leaders for critical conversations; to specific outreach to the Jewish community to facilitate communication and express her and the Office's support in prosecuting antisemitic hate crimes, to her special dedication and effort working with ADL to train Connecticut school administrators and educators on anti-Muslim and anti-Sikh bias and bullying; to her regular reach-outs to me and others to share and explain key stages in criminal cases so that our community is aware of progress and challenges, AUSA Nagala is not merely a prosecutor, she is a shining example of how to pursue justice, uphold the rule of law, and simultaneously be mindful of how communities view our justice system.

AUSA Nagala, who obviously has a superior intellect and legal mind, has a unique combination of confidence and humility. She asks questions, listens to the answers, respects and learns from the experience and perspectives of others, and always is forthright and measured in her demeanor and judgment.

ADL Connecticut
1952 Whitney Avenue, Hamden, CT 06517 | 203.288.6500 | connecticut@adl.org | connecticut.adl.o

As a leader at an organization that pursues just treatment for all, and as a resident of the State of Connecticut, I thank you for your consideration of this letter of support and hope that you will confirm AUSA Nagala's nomination.

Very truly yours,

Steven Ginsburg
Director
ADL Connecticut Region

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Sarala Vidya Nagala to the United States District Court for the District of Connecticut

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Sarala Nagala, who has been nominated by the President to the United States District Court for the District of Connecticut. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Ms. Nagala is **"Well Qualified"** to serve on the United States District Court for the District of Connecticut.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Sarala Vidya Nagala (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

The undersigned have served as Connecticut Assistant State's Attorneys, and several have worked in a supervisory capacity. All of us have had the privilege of working with Judge Omar Williams in various trial level courts in Connecticut. We are unanimous in our strong support of his appointment as a United States District Court Judge for the District of Connecticut.

There is a common belief that a judge reflects the values that she or he learned as a practicing attorney. For instance, some would expect that a former Public Defender would tend to be overly sympathetic to the defense or hyper technical when ruling on Fourth Amendment issues. Judge Williams 'performance on the bench belies these beliefs.

Judge Williams can always be counted upon to carefully listen to arguments from both sides, do his own legal research, and then render a decision that is fair and well supported by the law. In chambers conferences he is courteous, takes scrupulous notes and asks penetrating questions of both sides. On the bench he is clear, cogent and decisive. He speaks plainly and makes himself understood to everyone in his court.

Judge Williams's findings are thoughtful and well received. His decisions reflect his own evaluation process and not those of the prosecution or defense. Indeed, his sentences from time to time are more severe than those recommended by the State. On the other hand, he is willing to take a chance on a defendant if he believes that the facts of the case and the defendant's attitude warrant leniency.

On the bench, Judge Williams has an excellent demeanor. He is businesslike and efficient but remains approachable and courteous. He does not have to prove that he is the smartest person in the room because that is a quality which he routinely demonstrates through his decisions. Judge Williams has a great sense of humor and is highly regarded by the courtroom staff.

In conclusion, Judge Omar Williams is a highly gifted jurist and we strongly urge you to confirm his appointment to the bench in the United States District Court for the District of Connecticut.

Respectfully Submitted,

Carl R. Ajello lll
Anthony Bochiocchio
Sarah W. Bowman
Rafael I. Bustamante
Stephen M. Carney
Robert Diaz
Mirella Giambalvo
Jesse Giddings
Michael E. Kennedy
Steven Lesko
Jonathan Lewin
Paul J. Narducci
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July 27, 2021

Via Email
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Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Omar Antonio Williams to the United States District Court for the District of Connecticut

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Omar Williams, who has been nominated by the President to the United States District Court for the District of Connecticut. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A majority of the Standing Committee is of the opinion that Judge Williams is **"Well Qualified,"** and a minority determined that he is "Qualified" to serve on the United States District Court for the District of Connecticut. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
The Honorable Omar Antonio Williams (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)