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S. HRG. 109–397 Pt. 3

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

FEBRUARY 7, FEBRUARY 15, MARCH 1, MARCH 14, AND MARCH 29, 2006

Serial No. J–109–4

PART 3

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NOMINATIONS OF TIMOTHY C. BATTEN, SR., OF GEORGIA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; LEO MAURY GORDON, OF NEW JERSEY, NOMINEE TO BE JUDGE OF THE UNITED STATES COURT OF INTERNATIONAL TRADE; THOMAS E. JOHNSTON, OF WEST VIRGINIA, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA; AND AIDA M. DELGADO-COLON, OF PUERTO RICO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO

TUESDAY, FEBRUARY 7, 2006

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

The Committee met, pursuant to notice, at 4:04 p.m., in room SD–226, Dirksen Senate Office Building, Hon. John Cornyn presiding.

Present: Senator Cornyn.

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

Senator CORNYN. The Committee will come to order. Today, we have a confirmation hearing for four of the President's judicial nominees, and it is my hope and expectation that barring any unforeseen events, we will get these nominations to the Committee and to the floor of the Senate as soon as possible.

I have a statement from the ranking member, Senator Pat Leahy, which will be made part of the record, without objection. Also, Senator Frank Lautenberg has offered a written statement introducing Leo Gordon, which will likewise be made part of the record, without objection.

I also have a statement from Senator Saxby Chambliss concerning the nomination of Timothy Batten. He explains that both he and Senator Isakson are attending the funeral of Coretta Scott King and so they are unable to be here. I know there are other members who are attending today, hence the light turn-out for the

hearing. But, as I always tell nominees who come up for confirmation hearings, poor attendance is not a bad sign.

[Laughter.]

Senator CORNYN. You have to worry when everyone is here, loaded for bear, so to speak.

We are honored to have members of the Senate and the House here to make some introductory comments about some of the nominees, and I would like to first recognize Senator Rockefeller for any comments he would like to make on behalf of Thomas Edward Johnston.

PRESENTATION OF THOMAS E. JOHNSTON, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, BY HON. JOHN ROCKEFELLER, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman, and I just would pause to say that I admire what you have been through and gone through over the past several weeks. It has probably been some of the busier days of your life.

Senator CORNYN. Well, we are glad to get to hopefully some simpler, easier to projects to deal with, like the hearings today.

Senator ROCKEFELLER. Well, I hope my suggestion here will be taken and the President's nominee will be accepted by the Senate, and I am sure that will be the case.

Tom Johnston—and you gave his name—is our U.S. Attorney for the Northern District of West Virginia. We have two districts, North and South, and both are very complicated and both very, very different. That may be true in most States, but it certainly is true in ours.

He has agreed, along with his family who is behind me—and perhaps at this point I should ask them to wave or rise or something.

Senator CORNYN. That would be great.

Mr. Johnston, if you would ask your family to stand? And if you would care to introduce them, please go ahead.

Mr. Johnston. Thank you, Senator. This is my wife, Lisa Grimes Johnston; my son, Jack; my daughter, Joanna; and my mother-in-law, Jeanette Grimes.

Senator CORNYN. Very good. Welcome. I am glad you are here.

Senator ROCKEFELLER. It is important to get that mother-in-law part right.

[Laughter.]

Senator ROCKEFELLER. Thank you, Mr. Chairman. He has been nominated to come down and take the vacancy created by somebody who is an extremely close friend of mine, Judge Charles Hayden, who was judge there for many years, participated heavily in the life of our State, as does yet his wife, Priscilla, whom I am sure Tom Johnston knows very well. She has been on the board of education and I voted for her every time.

I don't know Tom Johnston that well, but I know him well enough to say that he is a very fine young lawyer in his own right, and by all accounts that I and my folks from my office working on this have been able to find out, he is a very capable and a very dedicated U.S. Attorney. I submit to the Committee that I expect

him to be a very good Federal judge, also. I don't have any doubts about that.

As I indicated, the seat that he will fill is a significant one. Judge Hayden has made a mark on the history of West Virginia like relatively few others. But Tom Johnston will be up to filling those shoes and I want to be able to see that happen. I support him, and I thank you for your attention, Mr. Chairman.

Senator CORNYN. Well, thank you very much, Senator Rockefeller, for being here and for making that introduction. I am sure Mr. Johnston and his family appreciate it, and I can guarantee you the Committee does.

We will stick with West Virginia, and Representative Capito is here. Welcome to the Committee and any additional comments you would care to make, now would be a good time to do that.

PRESENTATION OF THOMAS E. JOHNSTON, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, BY HON. SHELLEY MOORE CAPITO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Representative CAPITO. Thank you, Mr. Chairman, and I certainly would like to make an additional comment. Tom Johnston is born and bred in West Virginia. I consider him one of the best and brightest minds in our State of West Virginia. He is raising his family in West Virginia, and for those of us in West Virginia—and Senator Rockefeller knows this well, being a fellow West Virginian—there is nothing we treasure more than those that stay in West Virginia and raise their family and contribute to the fabric of the society and the economics of our State.

Tom has been a good friend of mine, I would say, for 5 years. I really met him through a political process, but we have grown to be friends with our families. He is raising, as I said, two fine young children back there, and he has led as the U.S. Attorney with great leadership and skill and we are very grateful to that.

I know he has had some assignments with the Department of Justice that have been exceptional for our State and for our Nation, but I expect him to be an extremely fair-minded judge. And I will say he is a young man. I guess we have to admit that, don't we? A young man, but he will have the courage, I think, to make the right decision. He has a lot of kindness and compassion, which I believe is critical when you become a judge, and I know that he will have a great longevity in this position that is going to be very important to our State.

So I am really pleased to be here with Senator Rockefeller. He has been a great guiding light for me, certainly, as the junior, junior, junior member of the West Virginia delegation. So I am pleased to have President Bush's great leadership in appointing Tom Johnston as a judge in the Southern District, and I look forward to his many years of service.

Thank you for giving me the opportunity.

Senator CORNYN. Thank you, Representative Capito, for taking the time to come here and make those remarks.

We know that members of the Senate and the House have a lot of other engagements they could be involved in, and other duties.

So, please feel free—if you would like to stay, fine. If you have other obligations, feel free to leave when you need to do so, but thank you very much for being here.

Our next introducer is Luis Fortuno, U.S. Representative from Puerto Rico, and Resident Commissioner, to speak on behalf of Aida Delgado-Colon.

Representative Fortuno, welcome to the Committee.

PRESENTATION OF AIDA M. DELGADO-COLON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO, BY HON. LUIS G. FORTUNO, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Representative FORTUNO. Thank you, Mr. Chairman. Thank you for allowing me the honor to introduce her.

As the sole Representative in Congress of the 4 million U.S. citizens residing in Puerto Rico, it gives me great pleasure to introduce U.S. Magistrate Aida Delgado to the Senate Judiciary Committee.

She is here with us and she has some members of the family and coworkers who are joining her today.

Senator CORNYN. Would you introduce your family members so we can identify them and they can share in your glory here?

Judge DELGADO-COLON. I would be honored and pleased to do that, Mr. Chairman. First of all, I would like to introduce my mother, Luz Colon. She is a retired teacher for the Commonwealth of Puerto Rico.

Senator CORNYN. Welcome.

Judge DELGADO-COLON. With her, my sister, Zulma. She is a devoted prosecutor within the Department of Justice in the Commonwealth of Puerto Rico. And along with me, as well, if you allow me to introduce at least a group of ten close, lifetime family friends whom I consider my relatives. All of them can stand at the same time. They have been very supportive and didn't hesitate to leave the warm temperature of the Caribbean to be here today.

Senator CORNYN. Well, welcome to all of you, and I know that your presence here is a great comfort and encouragement to the nominee.

Judge DELGADO-COLON. Thank you.

Senator CORNYN. Thank you.

Representative Fortuno.

Representative FORTUNO. Thank you.

She is the President's nominee for a vacancy on the U.S. District Court for the District of Puerto Rico. Mr. Chairman, I am honored and enthusiastic to appear before you today in support of her nomination.

Ms. Delgado was born in Lares and educated at the University of Puerto Rico and the Pontifical Catholic University of Puerto Rico. From those two institutions, she graduated with honors. Early in her legal career, she joined the Governor of Puerto Rico's Advisory Council on Labor Law as Director of Research and Investigations.

From 1982 to 1991, Ms. Delgado worked in the Office of the Federal Public Defender for the District of Puerto Rico, first as Assist-

ant Federal Public Defender, then as First Assistant Federal Public Defender, and finally as Acting Federal Public Defender. Since 1993, Magistrate Judge Delgado has served with distinction as a U.S. Magistrate in the U.S. District Court of Puerto Rico.

During that time, her rulings on both civil and criminal proceedings have had over a 98-percent adoption rate by the district court. From 1999 through 2003, she was accountable for resolving over 60 percent of all criminal pre-trial matters and over 55 percent of all civil pre-trial matters from the total number of issues assigned to magistrates of that court.

Since 2002, Magistrate Judge Delgado has also been an adjunct professor of Federal civil and criminal forensics practice at the Pontifical Catholic University of Puerto Rico School of Law. Her impeccable record in public service and in the field of law has earned her a place amongst the most distinguished jurists and attorneys in Puerto Rico.

This nominee has received widespread support from those who have worked with her. Actually, that is attested by so many of her co-workers joining us today. Those who face her in the courtroom speak with respect and admiration. Recently, the Federal Bar Association expressed its unconditional satisfaction with her qualifications and recognized her as, I quote, "exceptional, competent and qualified Federal legal professional."

Yesterday, the Hispanic National Bar Association endorsed her nomination by saying, and I quote again, "She has earned a well-deserved reputation of excellence over a 25-year career," end quote, and described her as, and I quote, "eminently qualified for the job," end of quote.

Last year, the American Bar Association issued a nearly unanimous vote rating Ms. Delgado as well qualified for appointment as judge of the United States District Court for Puerto Rico. It is the highest rating given by the American Bar Association Standing Committee on the Federal Judiciary.

Mr. Chairman, Ms. Delgado without any doubt is at the top of the legal profession in her community. Aida Delgado has been a pioneer in her family and profession. As the first lawyer in her family, she became the first woman at the Federal public defender's office and the first woman to be appointed Magistrate Judge in the District Court for Puerto Rico. She has received numerous awards and acknowledgements, and recently the Puerto Rico House of Representatives adopted a resolution endorsing her nomination.

I believe that Ms. Delgado possesses the intellectual capacity, the education and unbiased and dispassionate frame of mind which will allow her to excel in her new position. It is a pleasure for me to introduce to you and to recommend Ms. Aida Delgado as a nominee that fully understands the responsibility that a position on the Federal bench entails. I commend the President for selecting such an outstanding nominee, and if confirmed, she will be the second woman to go to the district court bench since 1985.

Thank you very much again, Mr. Chairman.

Senator CORNYN. Thank you, Representative Fortuno, for your introduction and the time you spent here. We appreciate that very much, and I know the nominee and her family and friends do as well. Thank you.

At this time, could I ask the nominees please to step forward? I need to administer the oath.

If you would raise your right hand, do each of you swear that your testimony before the Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BATTEN. I do.

Mr. GORDON. I do.

Mr. JOHNSTON. I do.

Judge DELGADO-COLON. I do.

Senator CORNYN. Thank you. Please have a seat.

Welcome, Mr. Batten and Mr. Gordon, as well.

By way of background, Timothy Carroll Batten, Sr., was nominated to be United States District Judge for the Northern District of Georgia. He received his Bachelor's of Science from the Georgia Institute of Technology and he has spent his entire legal career as an attorney with the firm of Shreeder, Wheeler and Flint, in Atlanta, working in commercial litigation, including fraud and breach of contract cases, construction cases, personal injury, products liability and malpractice litigation.

Welcome, Mr. Batten. If you have some family members here, this would be a good time maybe to introduce them.

Mr. BATTEN. Thank you, Mr. Chairman.

My wife, Beth is here. We brought half of Georgia. I have got six children. This is my oldest daughter, Anna, and then Claire. No. 3 had to take care of No. 6, who had expired. This is Laura and Paige.

And then I also brought my parents, Hosea and Carol Batten; my father-in-law, Carey Parkman; my brother, Eric, and his wife, Vicki; and three of their children, Scott, Rebecca and Mimi.

Senator CORNYN. Well, welcome to all of you. Thank you for coming. You have got a lot of good support there.

Mr. BATTEN. I am sorry if there aren't enough seats in the back.

Senator CORNYN. Well, I know this is an important day not just for you, but for your family and friends as well.

Senator CORNYN. Our fourth nominee is Leo Maury Gordon, nominated to be Judge of the United States Court of International Trade. Mr. Gordon received an A.B. from the University of North Carolina at Chapel Hill in 1973, and a J.D. from Emory in 1977.

Following law school, he served as an assistant counsel to the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law, focusing on antitrust and other commercial legislation. Since 1981, Mr. Gordon has been an attorney at the United States Court of International Trade, advising the judges of the court on substantive and procedural issues and litigation pending before the court, as well as on matters pertaining to the operation of the court.

Mr. Gordon, welcome, and if you have some introductions, we would be pleased to hear those at this time.

Mr. GORDON. Thank you very much, Mr. Chairman. It is my pleasure to introduce my wife, Marci Spero Gordon; my twin daughters, Jenny Gordon and Sarah Gordon; my brother, Toby Gordon; and the reason I am here today, my mother, Pearl Gordon.

Senator CORNYN. Well, welcome to each of you. Thank you for coming, and thank you for introducing your family to us.

We are going to entertain statements from each of the nominees, and I would ask for you to keep those in the 5-minute range. Hence, the clock, the timer out front. That is no stranger to any of you particularly in appellate courts. We don't have the green, yellow and red lights, but we do have a timer here.

Mr. Batten, we will start with you, if we may, if you have an opening statement or any comments you would care to make.

STATEMENT OF TIMOTHY C. BATTEN, SR., NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Mr. BATTEN. Thank you, Mr. Chairman. I just would like to express my profound appreciation to the President and to Senators Chambliss and Isakson, from Georgia, for lending support to my nomination and the President for nominating me. This is a position that I have felt strongly about for many years and I feel like it is a tremendous opportunity to serve the public and one that I believe I am ready for. And it is with great enthusiasm that I look forward to this opportunity hopefully to be confirmed by the Senate and to serve.

[The biographical information of Mr. Batten follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Timothy Carroll Batten, Sr.

2. Address: List current place of residence and office address(es).

   ***Residence*:**

   Atlanta, GA 30350-3427

   ***Business*:**

   Schreeder, Wheeler & Flint, LLP
   1600 Candler Building
   127 Peachtree Street, NE
   Atlanta, GA 30303-1845

3. Date and place of birth.

   5/23/60
   Atlanta, Georgia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Elizabeth ("Beth") Parkman Batten since April 25, 1987, who is a homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Law school: University of Georgia from 9/81 – 5/84. Received Juris Doctor 5/12/84

   College: Georgia Institute of Technology from 9/77 – 6/81. Received Bachelor of Science in Industrial Management 6/13/81

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Schreeder, Wheeler & Flint, LLP from 9/10/84 to present. Originally hired as an associate; became a full equity partner on 1/1/93.

Skinner, Wilson, Strickland, Benson & Hardy from 6/83 – 8/83 as a summer clerk. This law firm was located in Atlanta, but has not been in existence in more than a decade.

Troutman Sanders law firm from 6/82 – 8/82 as a summer clerk.

T.E.C.H. Ventures, Inc. from 10/91 to present. This is a closely held corporation whose stock is owned entirely by my father. I am one of four directors and am the corporate secretary.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I enrolled in the United States Marine Corps' Platoon Leaders Class program on December 30, 1977, and I served inactively until June 5, 1978, when I went to Officer Candidates School in Quantico, Virginia. I successfully completed OCS and was honorably released from active duty on July 14, 1978, and transferred to the reserve. I was honorably discharged from the Marine Corps Reserve on March 19, 1980, as a private (E-1).

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Vice-Chairman, Moot Court Board, UGA Law School.

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

State Bar of Georgia since 1984; State Bar of Georgia Appellate Admissions Committee Chairman 1988-1991; The Florida Bar since 1988; Old Warhorse Lawyers Club since 1999.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not a member of any organization that is active in lobbying before public bodies. I am a member of East Cobb Presbyterian Church.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Georgia Supreme Court, 1984; Georgia Court of Appeals, 1984; United States Court of Appeals for the Eleventh Circuit, 1985; United States Court of Appeals for the Fifth Circuit, 1990; United States District Court, Northern District of Georgia, 1984; United States District Court, Middle District of Florida, 1993; United States District Court, Southern District of Florida, 1993; Trial Bar of the United States District Court, Southern District of Florida, 1993; United States Tax Court, 1986; Florida Supreme Court, 1988. No lapsed memberships.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

2003 Georgia Contract Law and Litigation Seminar: Attorneys Fees (updated copy for 2005 seminar attached hereto).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent; June 15, 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

N/A.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

N/A.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

N/A.

17. Legal Career:

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

1. 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; **No**

2. whether you practiced alone, and if so, the addresses and dates; **No**

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

My only legal employment since my graduation from law school in 1984 has been with Schreeder, Wheeler & Flint, LLP.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Schreeder, Wheeler & Flint, LLP is a full-service general business practice that was formed in 1974, currently having twenty-five attorneys. I have been a trial lawyer with the firm since I began my employment in 1984. During that I time I have tried a wide variety of primarily civil cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients include small, medium and large business and financial institutions, and individuals. I have specialized in commercial litigation, including fraud and breach of contract cases, construction cases, and personal injury, products liability, and malpractice litigation, both plaintiff- and defendant-oriented.

c. 1. Did you appear in court frequently, occasionally, or not at all? **Frequently.** If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
(a) federal courts: **30 percent**
(b) state courts of record: **65 percent**
(c) other courts: **5 percent**

3. What percentage of your litigation was:
(a) civil: **95 percent**
(b) criminal: **5 percent**

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Forty as sole counsel; twenty as chief counsel, and thirty as associate counsel.

5. What percentage of these trials was:
(a) jury: **50 percent**
(b) non-jury: **50 percent**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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) FDIC v. Coleman, Shaw, Willous Group, Inc., 91 F.3d 161 (1996). I represented the FDIC as Conservator for Hollywood Federal Savings Bank in a suit against several investors in a failed business venture. The defendants filed counterclaims against our client raising several issues involving the interpretation and application of 12 U.S.C. § 1823(e), the D'Oench, Duhme doctrine, and the United States Supreme Court's recent decision in O'Melveny & Myers v. FDIC, 512 U.S. 79, 86, 114 S. Ct. 2048, 2054, 129 L.Ed.2d 67 (1994). Judge Forrester granted our client's motion for summary judgment in the district court, and the Eleventh Circuit affirmed. The defendants were represented by Michael Dailey, now with

Anderson Dailey, LLP, Suite 1820, 3475 Piedmont Road, NE, Atlanta, GA 30305, tp. 404.442.1800.

(2) Convalescent Servs., Inc. v. Tafuro, No. H-87-2404, (S.D. Tex. 1990). I represented a nursing home in a suit against a woman whose mother had died while in the care of the nursing home. The daughter, who was the personal representative of her mother's estate, filed a counterclaim for personal injury and wrongful death, alleging that the nursing home had failed to properly care for her mother, causing her death. The case was tried before District Judge Norman Black, and the jury returned a verdict in favor of my client on the complaint and counterclaim. The Fifth Circuit affirmed the judgment in an unpublished opinion, 928 F.2d 401 (5th Cir. 1991). Opposing counsel was Ray Schindler with Hughes, Schindler & Hamm, whose last known address is 13700 Veterans Memorial Drive, Suite 460, Houston, TX, tp. 713.537.1501.

(3) Jones v. Johnson & Johnson, Inc., No. 1:96-cv-2338-JOF (N.D. Ga. 1996). I represented a former employee of Johnson & Johnson who sold stents that are implanted during heart surgeries. The issue was the enforceability of a covenant not to compete. After substantial discovery, the case ultimately settled, with my client free to compete against her former employer. Judge Owen Forrester presided over the case, and Johnson & Johnson was represented by Les Schneider of Wimberly & Lawson, Suite 400, Lenox Towers, 3400 Peachtree Road, NE, Atlanta, GA 30326-1107, tp. 404.365.0900.

(4) Perry v. Md. Cas. Co., 193 Ga. App. 288, 387 S.E.2d 898 (1989). The morning after Jack Perry had arthroscopic knee surgery, he went to the office of his employer's worker's compensation carrier to pick up a check. The night before, one of the janitors had applied Liquid Gold on the rubber floor mat at the building's entrance. Jack was walking with crutches, one of which slipped when it came into contact with the oily mat, causing Jack to land directly on the knee that had been operated on the day before. I represented Jack and his wife in a suit against the building owner, its management company, the primary tenant, and the janitorial service. The jury trial, before the late Judge John Bruner in January 1988, lasted three weeks and resulted in a verdict for my clients of $165,000. The defendants were represented by Lance Lourie of the former Long, Weinberg, Ansley & Wheeler firm; Sam Pierce of the Drew, Eckl and Farnham firm; and Richard Eason of Eason, Kennedy & Associates. The current addresses and telephone numbers for Mr. Lourie are Watkins Lourie Roll & Chance, LLP, Tower Place 200, Suite 1050, 3348 Peachtree Road, NE, Atlanta, GA 30326, tp. 404.760.7400; for Mr. Pierce are 5064 Roswell Road Suite C-300, Atlanta, GA 30342, tp. 404.843.1512; and for Mr. Eason are Eason, Kennedy & Associates, P.O. Box 420527, Atlanta, GA 30342, tp. 404.257.0040.

(5) Bryson v. Button Gwinnett Sav. Bank, 205 Ga. App. 668, 423 S.E.2d 691 (1992). I defended the bank in a suit for fraud against several defendants in Gwinnett Superior Court. The other defendants settled, and the case proceeded to trial against the bank with Judge Homer Stark presiding. Following a one-week trial, the jury returned a verdict in favor of the

bank. Opposing counsel was Gary Harris, whose current office address is Gary C. Harris, P.A., P. O. Box 1190, Clayton, GA 30525, tp. 706.782.2227.

(6) McGonagil v. Treadwell, 216 Ga. App. 850, 456 S.E.2d 260 (1995). I represented Russ McGonagil, whose next-door neighbor caused him to be falsely arrested by the police for a criminal trespass that he did not commit. The case was tried in Cobb Superior Court before Judge Bodiford, and the jury returned a verdict in favor of my client and his wife for actual damages, plus $40,000 in attorney's fees. The defendants were represented at trial by Ted Salter, whose current address is Theodore Salter, Jr. & Associates, P. O. Box 53138, Atlanta, GA 30355, tp. 404.239.0106.

(7) S&A Indus., Inc. v. Bank Atlanta, 247 Ga. App. 377, 543 S.E.2d 743 (2000). My partner John Christy and I represented Bank Atlanta in a suit by one of the bank's borrowers. The complaint included over twenty separate causes of action. After extensive discovery, DeKalb County Superior Court Judge Michael Hancock granted our client's motion for summary judgment, which the court of appeals affirmed, splitting 6-6 on a significant usury issue. Opposing counsel was Larry James White and the firm of Smith, White, Sharma & Halpern, 1126 Ponce de Leon Avenue, NE, Atlanta, GA 30306-4517, tp. 404.872.7086.

(8) Tutsch v. Boulineau, 397 S.E.2d 710 (1990). David Flint and I represented a physician whose bookkeeper embezzled over $100,000 from him. When confronted, the bookkeeper responded by defaming the doctor, falsely representing to his patients that the doctor had AIDS. A Fulton Superior jury awarded our client $750,000. The bookkeeper subsequently attempted to kill the doctor and his wife. He shot her, fled, and was apprehended months later. He was subsequently convicted of aggravated assault. Judge Ralph Hicks presided over the jury trial. The bookkeeper was represented by Jay Loeb, who is now deceased.

(9) Vinings Jubilee Partners, Ltd. v. Vinings Dining, Inc., 266 Ga. App. 34, 596 S.E.2d 209 (2004). I represented a commercial landlord engaged in a bitter dispute with one of its tenants, a restaurant. We filed suit to evict the tenant, and during the course of the suit we filed a motion for a writ of possession based upon the tenant's failure to timely pay rent as it came due during the pendency of the case. The trial court denied the motion, but upon interlocutory appeal the Georgia Court of Appeals reversed. The tenant was represented by Brian J. Morrissey with Richelo, Morrissey & Wright, P.C., Marquis One Tower, Suite 505, 245 Peachtree Center Avenue, Atlanta, GA 30303, tp. 404.586.0505.

(10) DeKalb County v. Pine Hills Civic Club, 254 Ga. 20, 326 S.E.2d 214 (1985). David Flint and I represented the developer of a condominium project situated in DeKalb County on the DeKalb-Fulton boundary line. When our client applied with DeKalb County for a zoning hearing regarding the property, the county provided personal notice of our clients' application to the adjacent landowners residing in DeKalb County, but not to those residing in Fulton County. Judge Clarence Peeler held that the County had failed to comply with the DeKalb County zoning ordinance and had deprived the Fulton County landowners of

their equal protection and due process rights. On appeal, the Georgia Supreme Court unanimously reversed. The County was represented by Frank Jenkins of Jenkins & Olson, P.C., 15 South Public Square, Cartersville, GA 30120-3350, tp. 770.387.1373, and the Fulton County property owners were represented by Bill Clark, formerly of Frankel, Hardwick, Tanenbaum, Fink & Clark, P. C. whose current address is unknown.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

(1) From 2001 through 2003, I represented the widow of a man who was killed by a reckless tractor-trailer driver on Interstate 285 in north Fulton County. The case settled for a very substantial sum. See Palacios v. Malone Freight Lines, Inc., Fulton State Ct. No. 02VS029156G. Opposing counsel was Hank Scrudder with the Sommers, Scrudder & Bass firm, 900 Circle 75 Parkway, NW, Suite 850, Atlanta, GA 30339, tp. 770.612.9200, and Tara Waller with the Shur, McDuffie, Brockman & Williams firm, 380 Interstate North Parkway, Suite 101, Atlanta, GA 30339, tp. 770.640.6147.

(2) From 2001 through 2003, I represented the widow of a man who was killed by a reckless common carrier on Interstate 85 in Jackson County. The case was settled for a very substantial sum. See Robertson v. Global Express, LLC, Clayton Super. Ct. No. 2001CV4200-5. Opposing counsel was Tom Brennan with the Fain, Major, Wiley & Brennan firm, 100 Glenridge Point Parkway, Suite 500, Atlanta, GA 30342-1440, tp. 404.688.6633, and Mike Morgan with the Shur, McDuffie, Williams & Morgan firm, 380 Interstate North Parkway, Suite 101, Atlanta, GA 30339, tp. 770.952.3895.

(3) In 1998 and 1999, I represented the developer of a condominium project in north Fulton County. Several residents filed a lawsuit to enjoin the development. Ultimately, our clients prevailed and were able to proceed with the development. See Eagle Glen Unit Owners Ass'n v. Lee, 237 Ga. App. 240, 514 S.E.2d 40 (1999). Judge Gail Tusan presided over the case in the trial court. Opposing counsel was Randy Lipshutz with Lipshutz, Greenblatt & King, 2300 Harris Tower, 233 Peachtree Street, NE, Atlanta, GA 30303, tp. 404.688.2300.

(4) In 1992, David Flint and I represented the widow of the pilot of the ASA flight that crashed in Brunswick, Georgia, killing Texas Senator John Tower. Friedline v. Embraer-Enteresa, Pratt & Whitney, Inc., and United Techs. Corp., No. 1:91-cv-2334-WCO. We filed suit against the manufacturer of the aircraft and the manufacturer of its engines. After extensive discovery, the case settled for a very substantial sum. Defendant Embraer was represented by Michael J. Goldman, Hawkins & Parnell, LLP, 4000 SunTrust Plaza, 303 Peachtree Street, NE, Atlanta GA 30308-3243, tp. 404-614-7400; Defendant UTC was presented by Tom Strueber with Lord, Bissell & Brook, 1900 The Proscenium, Suite 1900, 1170 Peachtree Street, Atlanta, GA 30309, tp. 404-870-4600; and Defendant Pratt & Whitney

was represented by Paul Williams with Day, Berry & Howard, 185 Asylum Street, CityPlace One, Hartford, Connecticut, 06103, tp. 860-275-0100.

(5) In 1991 and 1992, my partner David Flint and I represented the seller of a large apartment project that was sued for breach of warranty, negligent construction, and fraud. Fulton Superior Court Judge Thelma Wyatt Cummings-Moore granted summary judgment to our client, and the court of appeals affirmed. Taboe-Vinings v. Vinings Partners, 205 Ga. App. 829, 424 S.E.2d 30 (1992). The plaintiff was represented by David Hendrick, now with Hendrick Phillips Salzman & Flatt, 230 Peachtree Street, NW, Suite 1800, Atlanta, GA 30303, tp. 404-522-1410.

(6) From approximately 1986 through 1990, I served as Chairman of the State Bar of Georgia's Appellate Admissions Committee, which oversaw the admission of all new bar members to the Georgia Supreme Court, Georgia Court of Appeals, and United States District Court for the Northern District of Georgia.

(7) In 2003 and 2005, I have been a speaker at the annual Georgia Contract Law Litigation Seminar on the topic of the recoverability of attorney's fees in contract actions.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

SWF-FSL, LLP, a Georgia limited liability partnership
I receive a quarterly distribution from fees earned by my law firm a few years ago. The amount of each distribution is approximately $800, and I anticipate that the distributions will continue indefinitely.

I have no other financial or business interests that involve future compensation.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I am aware that conflicts may arise that would necessitate my recusal from certain cases, and I will carefully monitor my cases to avoid overlooking the existence of any such conflicts. I intend to abide by the Code of Judicial Conduct for United States Judges, as well as all applicable statutes governing disqualification. I am not aware of any categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? **No.** If so, explain.

4. 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, patents, 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.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Financial Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Calendar Year 2004

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Batten, Timothy C	U.S. District Court, N.D., Ga.	9/30/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
District Judge - Nominee	(•) Nomination. Date 9/28/2005 ( ) Initial ( ) Annual ( ) Final	1/1/2004 to 8/31/2005
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1600 Candler Building 127 Peachtree Street, NE Atlanta, GA 30303-1845	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Schreeder, Wheeler & Flint, LLP
2.	Director and Secretary	T.E.C.H. Ventures, Inc.

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	12/1/01	SWF-FSL, LLP Partnership Agreement with law firm partners regarding deferred fee payments, no control

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Batten, Timothy C	9/30/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2003	Schreeder, Wheeler & Flint, LLP	297,429
2.	2004	Schreerder, Wheeler & Flint, LLP	364,413
3.	2005	Schreerder, Wheeler & Flint, LLP	101,000
4.	2004	SWF-FSL, LLP	3,065
5.	2005	SWF-FSL, LLP	3,073

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

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

	DATE	SOURCE AND TYPE
1.	2004	Candler Abstract Company - distributed earnings from title company
2.	2005	Candler Abstract Company - distributed earnings from title company

V. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Batten, Timothy C	Date of Report 9/30/2005

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.			

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
	Citibank	Credit Card	J
2.	American Express	Credit Card	K
	Chase Bank	Credit Card	L
	MBNA	Credit Card	L

INANCIAL DISCLOSURE REPORT
age 1 of 2

Name of Person Reporting	Date of Repot
Batten, Timothy C	9/30/2005

II. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
5.3191% interest in SWF-FSL, LLP	D	Dividend	J	U	Exempt				
Wachovia Securities IRA									
- IBM	A	Dividend	J	T					
- Home Depot	A	Dividend	J	T					
Smith Barney Citigroup Keogh									
- Amgen, Inc.	A	Dividend	J	T					
- Cisco Systems	A	Dividend	J	T					
- General Electric	A	Dividend	J	T					
- Home Depot	A	Dividend	K	T					
- Intel	A	Dividend	J	T					
- Lowes	A	Distribution	K	T					
- Medtronic	A	Dividend	J	T					
- Pfizer	A	Dividend	J	T					
- Enterprise Growth Fund	A	Dividend	J	T					
- Fidelity Spartan High Income Fund	A	Dividend	J	T					
- Growth Fund of America	A	Dividend	M	T					
- Franklin Mutual Qualified Fund Class C	A	Dividend	K	T					
- Sunamerica Focused Large-Cap Growth Class A	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 2 of 2

Name of Person Reporting	Date of Report
Batten, Timothy C	9/10/2005

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
9. - Washing Mutual Investors Fund Class A	A	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Batten, Timothy C	9/30/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Batten, Timothy C	9/30/2005

IX. CERTIFICATION.

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

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

Signature Tim Batten Date 9/30/05

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
ash on hand and in banks		2	000	Notes payable to banks-secured			
.S. Government securities-add chedule				Notes payable to banks-unsecured			
isted securities-add schedule				Notes payable to relatives			
nlisted securities--add schedule				Notes payable to others			
ccounts and notes receivable:				Accounts and bills due		197	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		683	000
eal estate owned-add schedule	1	150	000	Chattel mortgages and other liens payable			
eal estate mortgages receivable				Other debts-itemize:			
utos and other personal property		35	000				
ash value-life insurance							
ther assets itemize:							
Retirement Account (Keogh)		350	000				
IRA		17	000				
Furniture, furnishings, eqpt		100	000	Total liabilities		880	000
Clothing		10	000	Net Worth		784	000
otal Assets	1	664	000	Total liabilities and net worth	1	664	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
s endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
n leases or contracts				Are you defendant in any suits or legal actions?		No	
egal Claims				Have you ever taken bankruptcy?		No	
rovision for Federal Income Tax							
ther special debt							

Schedule of Real Estate Owned

Primary residence (Atlanta, GA 30350)	$950,000
Undivided 20.67% interest in family's beachfront Florida condominium	$200,000
Total	$1,150,000

Schedule of Mortgage Debt

First mortgage on primary residence in favor of SunTrust Bank	$630,000
Home equity line of credit in favor of Fidelity Bank	$53,000
Total	$683,000

III. GENERAL (PUBLIC)

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

Since I began practicing law twenty-one years ago, I have regularly performed pro bono work for people unable to afford legal services. The majority of these people have been made known to me through my church. For instance, I have counseled many women in abusive relationships who needed advice as to how to protect themselves. I have also helped less wealthy individuals adopt children. Specifically, there is a person who attends my church (East Cobb Presbyterian Church) who serves as a foster parent for Cobb County, caring for infants and children with severe disabilities caused by drug abuse during gestation. I have helped this woman adopt three such children and obtain guardianship rights over one of those three children, who is now an adult. Although our firm received some compensation for these services, our charges were substantially discounted. I also helped another woman not involved in our church adopt a biracial baby, for which I charged her nothing. It is difficult to estimate the amount of time spent on these matters, though I can safely say that I spend more than forty hours per year providing pro bono services.

In addition, our law firm contributes $300 per lawyer per year to the Atlanta Legal Aid Society in lieu of rendering pro bono services for that entity.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates—through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

If so, did it recommend your nomination?

Yes.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I learned in December 2004 that Judge Willis Hunt was taking senior status as of June 30, 2005, and that Senators Chambliss and Isakson would form a Judicial Screening Panel to interview all interested applicants. I completed and submitted the application form early in the process, and the panel interviewed me on March 22, 2005. In mid-April, I received a telephone call from the White House Counsel's Office inviting me to interview on May 2, 2005. On June 9, I received a telephone call from the White House Counsel's Office informing me that President Bush had selected me for the position, subject to my passing an FBI background investigation.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the proper role of the judiciary is determined by first considering the principle of separation of powers. Under our system of government, it is the function of the judicial branch to adjudicate only actual cases and controversies, not to establish policy or institute reforms or changes—activities within the province of the legislative branch.

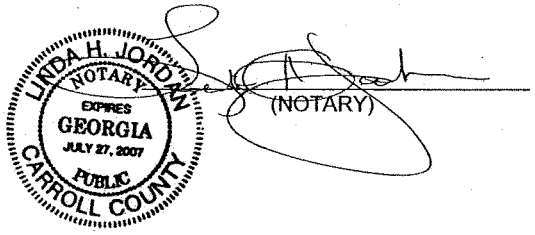
The rulings of the federal courts sometimes affect people beyond those who are parties to the litigation. But because of the presumption of constitutionality enjoyed by Congress's enactments and the limits of the federal courts' jurisdiction to actual cases and controversies, the effect of most district court rulings ordinarily will not extend beyond the parties. This is especially where courts follow, as I believe they should, the rule of law, with proper respect for precedent and stare decisis, which provides stability and predictability in the law.

AFFIDAVIT

I, Timothy Carroll Batten, Sr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 19, 2005
(DATE)

TIMOTHY CARROLL BATTEN, SR.



(NOTARY)

Senator CORNYN. Thank you, Mr. Batten.
Mr. Johnston.

STATEMENT OF THOMAS E. JOHNSTON, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

Mr. JOHNSTON. Mr. Chairman, thank you very much. Mr. Chairman, I will be very brief. I just want to express my appreciation for the opportunity to be here. It is a great honor. I thank the President for considering me for nomination and I appreciate very much the opportunity to be here.

[The biographical information of Mr. Johnston follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Thomas Edward Johnston

2. Address: List current place of residence and office address(es).

Residence: Wheeling, WV
Office: 1125 Chapline Street, Wheeling, WV 26003

3. Date and place of birth.

September 8, 1967; Charleston, West Virginia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address (es).

Married to Lisa Grimes Johnston (maiden name - Lisa Ann Grimes)
Assistant United States Attorney
On detail with U.S. Attorney's Office
for the Southern District of New York
86 Chambers Street
New York, New York 10007

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

West Virginia University
August 1989 - May 1992
J. D. received May 17, 1992

West Virginia University
August 1985 - May 1999
B.A. Political Science, May 1989

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,

nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

United States Attorney
U.S. Department of Justice
Northern District of West Virginia
Wheeling, West Virginia
October 2001 - Present

Associate Attorney
Bailey, Riley, Buch & Harman
Wheeling, West Virginia
November 1998 - October 2001

Associate Attorney
Flaherty, Sensabaugh & Bonasso
Wheeling, West Virginia
September 1996 - November 1998

Associate Attorney
Schrader, Byrd & Companion
Wheeling, West Virginia
September 1996 - November 1998

Law Clerk to the Honorable Frederick P. Stamp, Jr.
Chief United States District Judge
Wheeling, West Virginia
August 1992 - August 1994

Research Assistant to Professor Vincent Cardi
West Virginia University College of Law
Morgantown, West Virginia
January 1992 - April 1992

Summer Associate
Thompson, Hine & Flory
Cleveland, Ohio
May 1991 - August 1991

Summer Associate
Jackson & Kelly
Charleston, West Virginia
May 1990 - August 1990

Disc Jockey at WYPC/WJEH (Wagner Broadcasting)
Gallipolis, Ohio
May 1989 - August 1989
Member, Board of Directors
American Heart Association, Ohio County Chapter
Wheeling, West Virginia
1996 - 1998

Member, Board of Directors
Greater Wheeling Coalition for the Homeless
Wheeling, West Virginia
1994 - 1998

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received:

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Law School Awards and Activities
Order of the Coif
West Virginia Law Review-Articles Editor
Rhodes Scholarship Applicant and Semi-Finalist

College Awards and Activities
1987 Harry S. Truman Scholar
Phi Betta Kappa

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Member, West Virginia State Bar
Member, Ohio County Bar Association

I have never held an office in either of these organizations.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to the following organizations which may or do lobby:

West Virginians for Life
National Right to Life Committee
National Rifle Association

I am a member of the following other organizations:

Moundsville Baptist Church
Point Pleasant Presbyterian Church
West Virginia State Bar
Ohio County Bar Association
Coterie Dance Club
Board of Directors of Pike Cubs Baseball, Inc.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Pennsylvania Law License, November 1992, assumed voluntary inactive status November 2001
West Virginia Law License, May 1994

Admitted, United States District Court for the Northern District of West Virginia, 1994
Admitted, United States District Court for the Southern District of West Virginia, 1995
Admitted, United States Court of Appeals for the Fourth Circuit, 1995
Admitted, United States District Court for the Western District of Pennsylvania, 1998
Admitted, United States Court of Appeals for the Third Circuit, 1998

There have been no lapses in any of these memberships.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues

involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Since I have been United States Attorney I have submitted the following articles for publication on the editorial or opinion pages of local newspapers in my district:

1. "Terrorism in West Virginia?"-an article discussing the threat of terrorism in West Virginia
2. "Terrorism Prevention in Northern West Virginia"-a discussion of the terrorism prevention program of the United States Attorney's Office
3. "What Can You Do About Terrorism"-an article encouraging vigilance on the part of the citizens of our district
4. "Anti-terrorism: The Role of the FBI"-an article regarding the FBI and its JTTF program
5. "What exactly is the USA Patriot Act?"-a summary article regarding the act in general
6. "The Otter Amendment and Your Safety"-an article regarding Section 213 of the USA Patriot Act and a proposed congressional amendment
7. "Section 215 of the Patriot Act and What It Does Not Say About Libraries"-an article about Section 215 and some of the criticisms of it
8. "The Importance of Delayed Notification of Search Warrants to Your Safety"-an article regarding Section 213 of the Patriot Act
9. "The Patriot Act Has Been a Critical Tool in the Fight Against Terrorism"-an article about the Patriot Act in and some of the criticisms of the act

All of the above articles were submitted to most, if not all, of the daily newspapers in our district and one weekly statewide publication. I do not know if every newspaper published every article, but I believe that each article was published by at least one newspaper in our district.

I wrote an article for a publication of the Department of Justice for United States Attorneys, USA Bulletin, March 2003, "Project Safe Homes: An Opportunity to Focus on Domestic Violence Using Federal Law."

I wrote the following law review article in law school: Thomas E. Johnston, *Insider Preference Recovery Against Non-Insider Creditors,* 93 W. Va. L. Rev. 1025 (1991).

Also, while serving as an articles editor of the West Virginia Law Review, I edited several articles submitted by others, but my name was not attached to any of them, and I do not recall and did not record which articles I edited or whether they were eventually published.

I have written the following guest columns for the local newspaper, the Wheeling Intelligencer:

(a) "Alternate Delegate Tom Johnston, Part of History" - a preview article for the 2000 Republican National Convention, published August 1, 2000.
(b) "Republicans: Show of Diversity in Philadelphia was Real" - a summary article about the 2000 Republican National Convention, published on August 31, 2000.
(c) "Disturbing Trend Seen on Drugs" - an article opposing medicinal use of marijuana, published October 16, 1999.

Also, I used to publish a free newsletter, called the Messenger, by email to about 100 subscribers for the Ohio County Republican Party. I started this project in mid-2000 and turned over the production responsibilities to another person in May of 2001.

In college I was a contributing columnist to the West Virginia University student-run campus newspaper, the Daily Athenaeum. That amounted to the publishing of two or three guest columns during my college years. I also wrote at least one letter to the editor of that paper. I do not remember when these items were published, did not retain copies of them, and do not know how to get copies of them.

Finally, since I have been U.S. Attorney, I have given speeches on numerous occasions as a part of my work. One of the most frequent subjects has been the USA PATRIOT Act. While I do not have a complete set of all remarks I have given on the subject, the articles I have written on the subject and which are attached hereto set forth the substance of my remarks on the USA PATRIOT Act.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in very good health. My last physical examination was in July of 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

2001 - Present, United States Attorney (appointed)

17. Legal Career:

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

1. 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;

Law Clerk to the Hon. Frederick P. Stamp, Jr.
Chief United States District Judge
Northern District of West Virginia
August 1992 - August 1994

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

I have never been a solo practitioner.

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

United States Attorney
U.S. Department of Justice
P.O. Box 591 - 1125 Chapline Street
Wheeling, West Virginia
October 2001 - Present

Associate Attorney
Bailey, Riley, Buch & Harman
Wheeling, West Virginia
November 1998 - October 2001

Associate Attorney
Flaherty, Sensabaugh & Bonasso
Wheeling, West Virginia
September 1996 - November 1998

Associate Attorney
Schrader, Byrd & Companion
Wheeling, West Virginia
September 1994 - September 1996

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As United States Attorney, in addition to my other responsibilities, I have supervised and participated in the handling of both criminal and civil litigation on behalf of the United States. I have assigned myself to work on a number of criminal matters and have participated in three criminal trials to verdicts.

Prior to becoming United States Attorney, I focused my practice of law on litigation of all kinds. I participated in criminal, civil, federal and state litigation at both the trial and appellate levels. In addition to handling federal criminal cases on both a court-appointed and retained basis, I defended state court criminal cases, and I have experience in a variety of civil litigation, including medical malpractice defense,

construction disputes, commercial, real estate and mass tort cases, as well as others.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

When I was in private practice my most typical clients were insurance companies and their insureds, plaintiffs in personal injury or employment discrimination cases, small and mid-sized local businesses and criminal defendants.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My appearances in Court have been occasional and more frequent earlier in my career when I did more court-appointed criminal cases.

2. What percentage of these appearances was in:

(a) federal courts;

60%

(b) state courts of record;

40%

(c) other courts;

0%

3. What percentage of your litigation was:

(a) civil: 60%

(b) criminal: 40%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As United States Attorney, I have tried three cases, one as lead counsel and two as associate counsel. In private practice, I tried ten cases, three as sole counsel, two as lead counsel and five as associate counsel.

5. What percentage of these trials was:

(a) jury

85%

(b) non-jury.

15%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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) Case Style:	State v. Wade
Citation:	200 W.Va. 637, 490 S.E.2d 724 (1997)
Capsule Summary:	I served as court-appointed counsel for a defendant in a first degree felony murder case. The defendant was charged with felony murder in connection with his shooting of a purchaser in connection with a crack cocaine transaction. The defendant was tried, convicted, sentenced to life with mercy and his conviction

was affirmed by the West Virginia Supreme Court of Appeals.

Party Represented: Gary "Mo" Wade, Defendant

My Participation: I began as sole counsel, and later served as co-counsel for the trial and appeal. I participated in all aspects of the case investigation, motion practice, including a suppression hearing, trial preparations, trial, appellate briefing and argument.

Final Disposition: Conviction affirmed.

Dates of Representation: January 1995 - December 1997

Circuit Court Judges: Hon. Fred Risovich, II (Pretrial)
Hon. Martin J. Gaughan (Trial)

Supreme Court Judges: Hon. Larry V. Starcher
Hon. Elliot E. Maynard
Hon. Margaret L. Workman
Hon. Robin Jean Davis
Hon. Thomas E. McHugh

Co-Counsel: John Preston Bailey
Riley Building, Suite 900
Wheeling, WV 26003
(304) 232-6675

Opposing Counsel: Michael E. Nogay
3125 Pennsylvania Avenue
Weirton, WV 26062
(304) 723-1400

2) Case Style: Multi-phase Erection & Rigging, Inc. V. Jan Steel

Docket No./Date: Civil Action No. 5:95CV57
Tried in October 1996
Northern District of West Virginia

Capsule Summary: This was construction litigation between a steel erector and a steel fabricator involving the construction of the FBI Fingerprint Identification Center in Clarksburg, West Virginia. I served as counsel for the steel erector company. My client was claiming money that had not been paid, and the defendant alleged faulty work.

Party Represented: Multi-phase Erection & Rigging, Inc., Plaintiff

My Participation: I handled virtually all aspects of the litigation through a successful trial.

Final Disposition: Settled following verdict.

Dates of Representation: October 1995 - November 1996

Judges: Hon. Frederick P. Stamp, Jr.
United States District Judge

Opposing Counsel: James Watson
Steptoe & Johnson
Bank One Centre, 7th Floor
Charleston, WV 25426
(304) 353-8000

3) Case Style: United States v. Greg Schrader

Docket No./Date: Criminal Action No. 5:97CR32-01

Capsule Summary: The client was indicted for his alleged participation in a wide-ranging, multi-state car theft ring involving numerous individuals. My client was alleged to have personally stolen dozens of automobiles over the span of just a few

years.

Party Represented: Greg Schrader, Defendant

My Participation: As a court-appointed attorney, I participated in the investigation and motion practice, but spent most of my time not only negotiating a federal plea agreement, but also getting agreements not to prosecute from various local jurisdictions in more than one state.

Final Disposition: Sentenced pursuant to plea agreement.

Dates of Representation: May 1997 - December 1997

Judges: Hon. Frederick P. Stamp, Jr.
United States District Judge
Hon. James E. Seibert
United States Magistrate Judge

Opposing Counsel: Robert H. McWilliams, Jr.
U.S. Attorney's Office
P.O. Box 591
Wheeling, WV 26003
(304) 234-0100

4) Case Style: Charleston Construction Inc. v Burrell Industries, Inc.

Docket N./Date: Civil Action No. 95-C-306

Capsule Summary: My client was sued for allegedly providing defective concrete for a road project, and causing the plaintiff to incur expenses remedying the problems. My client counterclaimed for, among other things, payments due on the contract. The jury awarded damage to my client and none to the plaintiff.

Party Represented: Burrell Industries, Inc., Defendant

My Participation: After venue was established in Ohio County, the file was transferred to me and I handled virtually all aspects of the litigation, including serving as lead counsel at trial.

Final Disposition: Unknown (I left that firm following favorable verdict).

Dates of Representation: January 1997 - November 1998

Judges: Hon. Martin J. Gaughan

Opposing Counsel: John Loehr
1270 One Valley Square
Charleston, WV 25301
(304) 342-6606

Co-Counsel: Robert Samol
61 Fourteenth Street
Wheeling, WV 26003
(304) 232-6810

5) Case Style: Alexander v. Orenstein, et al.

Docket No./Date: Civil Action No. 94-0089
Tried in April-May 1998
Western District of Pennsylvania

Capsule Summary: I represented the parents of a deceased teenage girl in this medical malpractice case. The defendants were alleged to have been negligent in recommending that a young woman with a rare liver disease turn down three livers available for transplant. The young woman died and the case proceeded to trial, which lasted two and a half weeks.

Party Represented: John and Mary Jo Alexander, Plaintiffs

My Participation: I served as co-counsel and participated in various discovery and pretrial proceedings, as well as co-counsel at trial. I did not participate in the appeal.

Final Disposition: Settlement following reversal of plaintiff's verdict.

Dates of Representation: 1994-95, 1997-98

Judges: Hon. Maurice Cohill
United States District Judge

Co-Counsel: Patrick S. Casey
Flaherty, Sensabaugh & Bonasso
1225 Market Street
Wheeling, WV 26003
(304) 242-3941

Opposing Counsel: Charles Kendrick and
Marcelle Theis
Dickie, McCamey & Chilcote
PPG Place, Suite 400
Pittsburgh, PA 15222
(412) 281-7272

6) Case Style: Romano v. UMWA Health & Retirement Funds, et al.

Docket No.: Civil Action No. 92-C-182 W
Circuit Court of Ohio County

Capsule Summary: This litigation involved an allegation by a physician that a health plan had intentionally interfered with the physician's business relations with his patients. Specifically, the health plan instructed my client's patients not to pay his bills in any amount above that allotted by the health plan for each service. My client had no contractual relationship with the health plan.

Party Represented: Thomas Romano, M.D., Plaintiff

My Participation: I assisted with various pretrial aspects of this litigation including discovery and dispositive motion preparation.

Final Disposition: Settled prior to trial.

Dates of Representation: 1998 - 2001

Circuit Court Judges: Hon. Ronald E. Wilson

Co-Counsel: John Preston Bailey
Anne D. Harman
Bailey, Riley, Buch & Harman
Riley Building, Suite 900
Wheeling, WV 26003
(304) 232-6675

Opposing Counsel: Timothy F. Cogan
1413 Eoff Street
Wheeling, WV 26003
(304) 232-8100

7) Case Style: Krumm v. Townsend

Docket No: Civil Action No. 5:95CV156
Northern District of West Virginia

Capsule Summary: Judge Stamp asked my firm to handle this prisoner-related pro bono litigation following its survival of a summary judgment motion. The plaintiffs alleged that they were molested by a female guard during a routine search in preparation for the clients' visitation with a prisoner at the Northern Regional Jail and Correctional Facility in Moundsville, West Virginia.

Party Represented: Sharon and Krystlebeth Krumm, Plaintiffs

My Participation: I handled various pretrial activities and tried the case.

Final Disposition: Jury verdict against clients.

Dates of Representation: 1997 - 1998

Circuit Court Judges: Hon. Frederick P. Stamp, Jr.
United States District Judge

Opposing Counsel: Karen Kahle
Riley Building, Suite 400
Wheeling, WV 26003
(304) 233-000

8) Case Style: United States v. John William Loflin

Docket No.: Criminal Action No. 5:02 -CR-5
Tried in July 2002
Northern District of West Virginia

Capsule Summary: The defendant was charged with interstate travel to have sex with a minor and interstate transportation of a minor for sexual purposes. The defendant was tried and convicted of six of the eight counts against him.

Party Represented: United States of America

My Participation: I assisted in the investigation of the case prior to indictment and then served as lead trial counsel, including trial preparation and the trial of the case. I did not personally participate in the briefing or argument of the appeal.

Final Disposition: This conviction was affirmed on the merits on appeal, but the U.S. Supreme Court remanded this case, along with others, to the Court of Appeals, for consideration of Booker sentencing issues.

Dates of Representation: March 2002 to April 2004

Judge:	Hon. Frederick P. Stamp, Jr. United States District Judge
Co-counsel:	AUSA Shawn Angus Morgan United States Attorney's Office 320 W. Pike Street, Suite 300 Clarksburg, WV 26301 (304) 623-7030
Opposing Counsel:	Mark F. Underwood, Esquire 910 Fourth Avenue, Suite 1111 Huntington, WV 25701 (304) 522-0508
9) Case Style:	United States v. Darryl Smith
Docket No:	Criminal Action No. 1:03 CR 39 Tried in December 2003 Northern District of West Virginia
Capsule Summary:	The defendant was charged with multiple counts relating to drug distribution taking place primarily in the area of Clarksburg, West Virginia
Party Represented:	United States of America
My Participation:	I served as Associate Trial Counsel and participated in trial preparations and the trial of the case.
Final Disposition:	Defendant was found guilty of several counts of drug related charges and the judgment was affirmed by the appellate court on the merits, but remanded for re-sentencing under Booker.
Dates of Representation:	July 2003 - Present
Judge:	Hon. Frederick P. Stamp, Jr. United States District Judge
Co-Counsel:	AUSA John C. Parr United States Attorney's

	Office P.O. Box 591 - 1125 Chapline Street Wheeling, WV 26003 (304) 234-0100
Opposing Counsel:	Kevin Tipton, Esquire 99 Fairmont Avenue Fairmont, WV 26555 (304) 367-1514
10) Case Style:	United States v. Kofie Jones Criminal Action No. 1:03 CR 47
Docket No:	Tried in January 2004 Northern District of West Virginia
Capsule Summary:	The defendant was charged with crimes related to the attempted robbery and robberies of two bank branches and a grocery store in Morgantown, WV in the summer of 2003.
Party Represented:	United States of America
My Participation:	I served as Associate Trial Counsel and participated in trial preparations and the trial of the case.
Final Disposition:	The jury returned a verdict of guilty on all counts, and the judgment was affirmed by the appellate court.
Dates of Representation:	September 2003 - February 2005
Judge:	Hon. Frederick P. Stamp, Jr. United States District Judge
Co-Counsel:	AUSA Robert H. McWilliams, Jr. United States Attorney's Office P.O. Box 591 - 1125 Chapline Street Wheeling, WV 26003

(304) 234-0100

Opposing Counsel: James M. Pool, Esquire
339 Washington Avenue
Clarksburg, WV 26301
(304) 622-0000

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal activity has been the opportunity to serve as United States Attorney for the Northern District of West Virginia. In this capacity, I have led the Anti-Terrorism Advisory Council program in our district, in close coordination with the FBI's Joint Terrorism Task Force; I have pursued the enforcement of the law relating to firearms, drugs, domestic violence, white collar crime, crimes against children and crimes against the elderly, among others; and I have supervised the representation of the United States in civil litigation in our district. I have participated in the handling of both criminal and civil cases, including participating in the trial of three. I believe that the resources of our office, in concert with those of our law enforcement partners, have made the communities of our district safer.

Prior to my service as United States Attorney, I believe that the most significant legal activities I undertook were the representation of criminal defendants, most of them indigent, construction litigation and medical malpractice defense litigation. When I finished my clerkship, I was committed to handling court-appointed criminal cases because I believed that I owed that service as a duty to the system. That work helped refine my skills in that area of practice. I handled and/or tried several construction related cases, which gave me a somewhat unusual and specialized area of expertise. Finally, at one time I handled a number of medical malpractice defense matters, including serving as associate liaison counsel for a group of doctors who were sued as a part of litigation over the weight loss drug Fen-Phen. This gave me excellent experience in mass tort cases and the handling of expert witnesses.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I am a participant in the Thrift Savings Plan. I have no other arrangements for future compensation.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will be aware of case assignments to ensure that no conflict exists with my financial interests or with the cases I handled as United States Attorney. I will follow the Code of Conduct for United States Judges, applicable statutes and rules of judicial ethics.

3. 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.

4. 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, patents, 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, AO-10.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See attached financial net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

(a) 1999-2000 George W. Bush and Bush/Cheney Campaigns - Northern Panhandle Regional Coordinator. I was primarily responsible for campaign activities in my six counties.

(b) 1999-2000 Shelley Moore Capito for Congress Campaign - I was responsible for fund-raising in the Northern Panhandle area.

(c) 1998 Justice John McCuskey for West Virginia Supreme Court Campaign - I served on the Northern Panhandle Committee and performed various campaign related tasks.

(d) 1996 John Karras for Ohio County Commission Campaign - I was a campaign volunteer.

(e) 1998-2001 Chairman, Ohio County Republican Executive Committee. In this capacity, I played no formal role in local campaigns, but informally advised candidates and potential candidates.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2003

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

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Johnston, Thomas E.	Southern District of West Virginia	9/29/05

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
District Judge - Nominee	X Nomination, Date 9/28/05 ___ Initial ___ Annual ___ Final	1/1/04 to 8/31/05

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
United States Attorney's Office P.O. Box 591 - 1125 Chapline St. Wheeling, West Virginia 26003	Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[X]	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
[X]	NONE (No reportable agreements.)	
1		
2		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME
A. Filer's Non-Investment Income			
[X]	NONE (No reportable non-investment income.)		
1			
2			$
3			$
			$

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

[X]	NONE (No reportable non-investment income.)	
1		
2		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Thomas E. Johnston	9/29/05

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1		Exempt	$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000
P2=$5,000,001-$25,000,000 P3=25,000,001-50,000,000 P4=50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Thomas E. Johnston	9/29/05

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,									
1 Hartford SMART 529 Plan 1		None	J	T	Exempt				
2 Hartford SMART 529 Plan 2		None	J	T					
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Thomas E. Johnston	9/29/05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

1. With regard to Part III, my spouse and I have been federal employees for the applicable period.

IX. CERTIFICATION.

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

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

Signature _____ Date 9/29/05

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		16	967	Notes payable to banks-secured		44	944
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		210	801
Real estate owned-add schedule		255	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		64	126				
Cash value-life insurance							
Other assets itemize:							
RETIREMENT ACCOUNTS		305	960				
529 COLLEGE SAVINGS		14	018				
				Total liabilities		255	745
				Net Worth		400	326
Total Assets		656	071	Total liabilities and net worth		656	071
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	NO			Are any assets pledged? (Add schedule)	NO		
On leases or contracts	NO			Are you defendant in any suits or legal actions?	NO		
Legal Claims	NO			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	NO						
Other special debt	NO						

FINANCIAL STATEMENT

SCHEDULES

Real Estate Owned

Personal Residence $255,000

Real Estate Mortgage Payable

Personal Residence $210,801

III. GENERAL (PUBLIC)

1. 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.

   At every firm where I have been employed, I have handled matters on a pro bono basis through a local pro bono referral program. I have handled numerous such cases, and have also participated in the screening programs, relating to pro bono referrals, for the West Virginia Legal Services Corporation. Further, I served on the Board of Directors for the Greater Wheeling Coalition for the Homeless. During my time on the Board, we were working toward opening a transitional shelter in Wheeling.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies

   None.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   There is no selection commission in our jurisdiction. I submitted a resume to the office of Congresswoman Shelley Moore Capito. She interviewed me in June of 2004. I was then contacted by the White House in July of 2004 and asked for a resume, which I provided. Thereafter, I was interviewed twice, in August of 2004 and March of 2005, by members of the White House Counsel's Office and the Department of Justice. After a background investigation, I

was notified by the White House that I would be nominated. My nomination was submitted to the Senate on September 28, 2005.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the judiciary should apply and, when necessary, interpret the law fairly and reasonably, but not step into the role of the legislative branch. My view of the role of the district court is that a judge should provide litigants with a fair and just forum within which

to resolve disputes brought to the court, as efficiently as possible. A judge can do that by assisting the trier of fact in their review of a case under the law and rules of evidence, by promoting alternate dispute resolution, and by clearly setting forth the applicable law when necessary. If there is a question about the law, the district court should resolve those questions in a manner that faithfully interprets the law based on its purpose and applicable precedents.

AFFIDAVIT

I, Thomas Edward Johnston, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/10/05
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
[illegible] COTTRELL
U.S. DISTRICT COURT
P.O. BOX 471
WHEELING, WV 26003
My commission expires July 25, 2010

Senator CORNYN. Thank you, Mr. Johnston.
Mr. Gordon.

STATEMENT OF LEO MURRAY GORDON, NOMINEE TO BE JUDGE OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. GORDON. Thank you, Mr. Chairman. Initially, let me thank you and the Committee for the opportunity to appear before you today. I also wish to express my profound gratitude to the President for his confidence in sending forth my nomination to the Senate.

It is with a great deal of humility that I appear today in continuation and furtherance of my public service, and I look forward, if the Senate so desires, to serving in the capacity as a judge at the United States Court of International Trade and continuing my service to the country.

Thank you.

[The biographical information of Mr. Gordon follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Leo Maury Gordon

2. Address: List current place of residence and office address(es).

   Residence - Maplewood, NJ
   Work - U.S. Court of International Trade, One Federal Plaza, New York, NY 10278

3. Date and place of birth.

   January 18, 1952 - Newark, NJ

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Wife - Marci Spero Gordon (Marci Spero - maiden name)
   Teacher, So.Orange-Maplewood School District - Maplewood, NJ
   Business Address - 525 Academy St., Maplewood, NJ 07040

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of No. Carolina - Chapel Hill, NC
   1969-1973 - AB Degree - May 1973

   Washington University School of Law - St. Louis, MO
   August 1974 - No degree

   Emory University School of Law - Atlanta, GA
   1974-1977 - JD Degree - June 1977

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   September 1977 through January 1981 - Assistant Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, 2137 Rayburn H.O.B., Washington, DC

January 1981 to July 1999 - Assistant Clerk, U.S. Court of International Trade, One Federal Plaza, New York, NY

July 1999 to present - Clerk of the Court, U.S. Court of International Trade, One Federal Plaza, New York, NY

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

State Bar of Georgia

New Jersey State Bar Association

District of Columbia Bar

Advisory Committee on Rules of the United States Court of International Trade

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, none of the organizations to which I belong are active in lobbying before public bodies.

I belong to the following organizations:

Newark Academy Alumni Association Board of Governors

Newark Academy Board of Trustees

Oheb Shalom Congregation Board of Trustees

Oheb Shalom Mens Club

University of North Carolina General Alumni Association

American Association of Retired Persons

Phi Beta Kappa

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Georgia - June 1977; Current status is inactive - Member in good standing - (took inactive status in 1977)

Court of Appeals of Georgia - June 1977

United States Court of Appeals for the Fifth Circuit - September 1977

Supreme Court of the State of New Jersey - December 1977 - Current status is active - Member in good standing

United States District Court for the District of New Jersey - December 1977

District of Columbia Court of Appeals - May 1978; Current status is inactive - member in good standing - (took inactive status in 1978)

United States Customs Court - August 1979 (now the U.S. Court of International Trade)

United States Court of International Trade - November 1980

United States Court of Customs and Patent Appeals - April 1980 (now the U.S. Court of Appeals for the Federal Circuit)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications:

United States Court of International Trade Procedural Handbook - A Guide to Processing Actions Under the Court's Rules (Publication of the Office of the Clerk) - 1986.

"A Cure for the Board Member Blues" - School Leader (Publication of the New Jersey Schools Boards Association) - May/June 1998

"Major Aspects of the Customs Courts Act of 1980" - Litigation Before the U.S. Court of International Trade - Practice and Procedure Under the Customs Courts Act of 1980 (Law & Business, Inc. Harcourt Brace Jovanovich) - 1981.

13. Health: What is the present state of your health? List the date of your last physical examination.

Present Health is excellent - last physical June 2005

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member - So. Orange-Maplewood, NJ Board of Education
September 1992 - April 1993 - Appointed

Member - So. Orange-Maplewood, NJ Board of Education
April 1993 - September 1999 - Elected April 1993, April 1996 and April 1999

Member - Maplewood Planning Board - 1992 -1997 (approximately)- Appointed

Member - Maplewood Rent Leveling Board - 1985 - 1993 (approximately) - Appointed - Chairman - 1990 - 1993 (approximately)- Appointed

17. Legal Career:

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

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

I did not serve as a law clerk to a judge

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

I have never practiced alone.

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

September 1977 through January 1981 - Assistant Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, 2137 Rayburn H.O.B., Washington, DC

January 1981 to July 1999 - Assistant Clerk, U.S. Court of International Trade, One Federal Plaza, New York, NY

July 1999 to present - Clerk of the Court, U.S. Court of International Trade, One Federal Plaza, New York, NY

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

September 1977 - January 1981 - involved with initiatives and projects relating to commercial and antitrust legislative proposals; also was involved with legislative proposal to create the U.S. Court of International Trade.

January 1981 - present - involved with providing legal, operational, procedural, administrative, educational, technological, project management and public relations services regarding the administration of the Clerk's Office at the U.S. Court of International Trade.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients have been public entities - the United States House of Representatives and the United States Court of International Trade.

My area of specialization is customs and international trade law.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Not at all

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

   Not applicable

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

   Not applicable.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I have tried no cases to verdict or judgment.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

   Not applicable.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

   Because of the nature of my legal career in public service, first as a staff member of the U.S. House of Representatives, then as Assistant Clerk and Clerk of the U.S. Court of International Trade, I have not engaged in litigation. A list of professional references follows:

Donald B. Cameron, Jr.
Kaye, Scholer LLP
The McPherson Building
901 15th St., NW - Suite 1100
Washington, DC 20005-2327
202-682-3630

James R. Cannon, Jr.
Williams, Mullen, Clark & Dobbins
1666 K St., NW - Suite 1200
Washington, DC 20006-1200
202-833-9200

Richard O. Cunningham
Steptoe & Johnson, LLP
1330 Connecticut Ave., NW
Washington, DC 20036-1795
202-429-6434

Joseph F. Donohue, Jr.
Donohue and Donohue
26 Broadway - Suite 2300
New York, NY 10004-1801
212-269-2330

Lawrence M. Friedman
Barnes, Richardson & Colburn
303 E. Wacker Dr. - Suite 1100
Chicago, IL 60601-5299
312-565-2000

Alice A. Kipel
Steptoe and Johnson, LLP
1330 Connecticut Ave., NW
Washington, DC 20036-1795
202-429-6743

John J. Mangan
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Ave., NW
Washington, DC 20005
202-371-7775

Michael S. O'Rourke
Rode & Qualey
55 W. 39th St. - 6th Floor
New York, NY 10018
212-944-7333

William D. Outman, II
Baker & McKenzie
815 Connecticut Ave., NW
Washington, DC 20006-4078
202-452-7010

Paul C. Rosenthal
Collier Shannon Scott, PLLC
3050 K St., NW - Suite 400
Washington, DC 20007-5108
202-342-8485

Melvin S. Schwechter
LeBoeuf, Lamb, Green & MacRae, LLP
1875 Connecticut Ave., NW
Washington, DC 20009
202-986-8011

Leonard M. Shambon
Wilmer Cutler Pickering Hale and Dorr LLP
1899 Pennsylvania Ave., NW
Washington, DC 20006
202-663-6648

Valerie A. Slater
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Ave., NW - Suite 400
Washington, DC 20036
202-887-4112

Terence P. Stewart
Stewart and Stewart
2100 M St., NW - Suite 200
Washington, DC 20037-1207
202-785-4185

Barbara Silver Williams
Attorney-in-Charge
International Trade Field Office
U. S. Department of Justice
26 Federal Plaza - Room 346
New York, NY 10278
212-264-9240

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As Assistant Counsel on the House Judiciary Committee, my responsibilities involved the consideration of a range of antitrust and other commercial legislation. I prepared memoranda on proposed legislation for Subcommittee members and the General Counsel of the Committee. I arranged the appearance of witnesses, assisted Members in conducting hearings, drafted legislation and Subcommittee and Committee Reports. I served as lead counsel in the drafting of the Customs Courts Act of 1980, which established the United States Court of International Trade.

My daily responsibilities and activities as Clerk of the Court, and previously as Assistant Clerk, are representative of my significant legal activities. Set forth below are examples of the legal activities that have been the major focus of my efforts.

As the "in-house" counsel, I work with and advise the Judges of the Court and their law clerks on substantive and procedural issues in litigation pending before the Court. I serve as chief legal advisor to the judges and law clerks on substantive and procedural matters affecting the operation of the Court. I provide central Court-wide legal services on customs and international trade law, and the Court's Rules.

In the course of these activities, I am asked to examine arguments of counsel, and review draft opinions and orders to ensure uniform and consistent treatment of actions before the Court regarding the interpretation, administration and enforcement of the customs and international trade laws.

Since the Court does not have masters or magistrates, I am charged with the responsibility to develop special procedures for handling complex, multi-party, multi-case litigation. Over the past 15 years, I have prepared, with the assistance of counsel, the case management plans for cases involving the steel, large newspaper printing press, low-enriched uranium, bedroom furniture, and softwood lumber industries.

I analyze and implement changes in Federal statutes affecting the jurisprudence of the Court. I implement directives and policies promulgated by the Judicial Conference of the United States and the Administrative Office of the U.S. Courts.

I also have worked with the Court's Advisory Committee on Rules and Practice on changes in the Court's practices, procedures and Rules to reduce costs and delays in litigation before the Court. These activities have involved the drafting of amendments to the Court's Rules and improving the Court's internal processes and procedures to manage its caseflow.

I spend significant amounts of time involved with the developing and implementing educational training for the Court's law clerks. I also work with the bar and law schools on CLE programs focusing on the work of the Court and the substantive customs and international trade laws in order to raise the quality of practice before the Court.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I participate in a retirement program for Fedral employees, including the Thrift Savings Plan

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   My actions regarding recusal and avoiding a real conflict, or the appearance of a conflict of interest, would be governed by applicable statutes, the Code of Conduct for United States Judges, and the interpretative rulings and advisory opinions thereto.

   I would examine a party's corporate disclosure statement that is filed in each case to determine if a financial conflict exists involving a member of my staff, a member of my immediate family or me. I also would undertake an examination of any potential professional conflict by virtue of my prior involvement as Clerk of the Court or the past or future employment of a member of my judicial staff.

3. 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

4. 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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes

I was a candidate for appointment to fill an unexpired term as a member of the So. Orange-Maplewood, NJ Board of Education. The vacancy was created by the resignation of a member of the Board. I was one of several candidates considered by the Board for the vacancy and was appointed to the position in September 1992 and served in that capacity until April 1993. In April 1993, I was elected for a three-year term to the So. Orange-Maplewood, NJ Board of Education. I was the candidate. The campaign ran from February - April 1993. I also was responsible for all aspects of the campaign, including arranging for house meetings, production of campaign materials, fund-raising and appearances at debates.

In April 1996, I was re-elected for a three-year term to the So. Orange-Maplewood, NJ Board of Education. I was the candidate. The campaign ran from February - April 1996. I also was responsible for all aspects of the campaign, including arranging for house meetings, production of campaign materials, fund-raising and appearances at debates.

In April 1999, I was re-elected for a three-year term to the So. Orange-Maplewood, NJ Board of Education. I was the candidate. The campaign ran from February - April 1999. I also was responsible for all aspects of the campaign, including arranging for house meetings, production of campaign materials, fund-raising and appearances at debates. I resigned from the Board in September 1999 upon assuming the position of Clerk of the Court at the U.S. Court of International Trade.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Gordon, Leo M	U.S. Court of Int'l Trade	11/14/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. ReportType** (check appropriate type)	**6. Reporting Period**
Judge - Nominee	(•) Nomination, Date 11/10/2005 ( ) Initial ( ) Annual ( ) Final	1/1/2004 to 10/31/2005
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
U.S. Court of Int'l Trade One Federal Plaza - Room 597 New York, NY 10278	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Omega 553 Partners - Maplewood, NJ
2.	Partner	Gordon Family Partnership - Maplewood, NJ
3.	Governor & President	Newark Academy Alumni Ass'n Board of Governors - Livingston, NJ
4.	Trustee	Newark Academy Board of Trustees - Livingston, NJ

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

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gordon, Leo M	11/14/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2004	So. Orange-Maplewood, NJ Board of Education - Teaching - Salary
2.	2005	So. Orange-Maplewood NJ Board of Education - Teaching - Salary

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	
2.		
3.		
4.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gordon, Leo M	11/14/2005

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	MBNA	Credit Card	J
2.	Chase Bank)	Credit Card	J
3.	ACS (Affiated Computer Services Corp.)	Student Loans	J
4.	Sallie Mae Servicing	Student Loans	K
5.	Citibank	Student Loans	K

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Gordon, Leo M	11/14/2005

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Verizon Communications - Common Stock	A	Dividend	J	T	Exempt				
2. Centennial Money Market Trust	A	Interest	J	T					
3. Franklin Templeton - Temp A - World Fund - Mutual Fund	A	Dividend	K	T					
4. VanKampen Amer. Capital High Yield Munic. Fund - Mutual Fund	B	Interest	K	T					
5. Disney - Common Stock	A	Dividend	J	T					
6. Valley Nat'l Savings Bank - Savings Account	A	Interest	J	T					
7. Bank of America - Savings Account	A	Interest	J	T					
8. Bank of America - Savings Account	A	Interest	J	T					
9. ING Security Life - Whole Life Insurance Policy	A	Interest	J	T					
10. Bell South - Common Stock	A	Dividend	J	T					
11. Bell South - Common Stock	A	Dividend	J	T					
12. Wachovia Corp. - Common Stock	A	Dividend	J	T					
13. Wachovia Corp. - Common Stock	A	Dividend	J	T					
14. PNC - Common Stock	A	Dividend	J	T					
15. PNC- Common Stock	A	Dividend	J	T					
16. Franklin Templeton - Discovery Fund - Class Z - Mutual Fund	A	Dividend	J	T					
17. Franklin Templeton - Discovery Fund - Class Z - Mutual Fund	A	Dividend	J	T					

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3) I = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = $More than $50,000,000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gordon, Leo M	11/14/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Block 7 - Office address is the address of the Office of the Clerk

III.2.A - No non-investment income to report other than federal salary received for position as Clerk of the Court at the U.S. Court of International Trade

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gordon, Leo M	11/14/2005

IX. CERTIFICATION.

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

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

Signature Leo M. Gordon Date 11-14-2005

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		29	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		1	500	Notes payable to banks-unsecured		67	500
Listed securities-add schedule		80	430	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		35	380
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		348	000
Real estate owned-add schedule		725	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000				
Cash value-life insurance		25	000				
Other assets itemize:							
TSP Contributions		65	000				
New Jersey State Pension Plan		12	000				
				Total liabilities		450	880
				Net Worth		527	050
Total Assets		977	930	Total liabilities and net worth		977	930
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

SCHEDULE A - GOVERNMENT SECURITIES

1. U.S. Savings Bonds	$ 1,500

SCHEDULE B - LISTED SECURITIES

1. VanKampen American Capital High Yield Municipal Fund A	$ 27,500
2. Franklin Templeton - Templeton A - World Fund	$ 30,500
3. Franklin Templeton - Mutual Discovery Fund - Class Z	$ 4,700
4. Disney - Common Stock	$ 7,500
5. Bell South - Common Stock	$ 4,400
6. Verizon Communications - Common Stock	$ 100
7. Verizon Wireless - Common Stock	$ 25
8. AT&T - Common Stock	$ 20
9. Wachovia Bank - Common Stock	$ 3,825
10. PNC - Common Stock	$ 1,800
11. Lucent Technologies - Common Stock	$ 10
12. Avaya - Common Stock	$ 10
13. Comcast - Common Stock	$ 40
Total	$ 80,430

SCHEDULE C - REAL ESTATE OWNED

1. Personal Residence - Maplewood, NJ	$ 725,000

SCHEDULE D - REAL ESTATE MORTGAGES PAYABLE

1. Investors Savings Bank - Millburn, NJ - 1st Mortgage	$ 294,000
2. Valley National Bank - Wayne, NJ - Home Equity Loan	$ 54,000

III. GENERAL (PUBLIC)

1. 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 tenure at the U.S. Court of International Trade, I have managed the *pro se* litigation calendar and helped numerous litigants obtain *pro bono* counsel.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   No

   I was interviewed on two occassions by members of the Office of the Counsel to the President. The interviews covered all aspects of my professional career, including an extensive discussion of my current duties and responsibilities as Clerk of the Court at the U.S. International Trade. In particular, the questioning focused on the depth of my substantive knowledge of the customs and international trade laws and significant legal work that I do as a quasi-master/magistrate in managing large complex litigation before the Court, managing the *pro se* calendar and my active involvement in the settlement of cases. In addition, we discussed my role as the "in-house counsel" for the Court and that the judges and law

clerks seek my guidance and assistance in addressing a variety of substantive and procedural issues. I was informed that I was selected to go forward in the process. After completing all necessary paperwork and undergoing a background investigation, I was notified that the President would be sending my nomination to the Senate. I was nominated on November 10, 2005.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The judiciary is one of three co-equal branches of the Federal Government. A judge must respect the separation of powers and perform his/her duties as defined by the Constitution for the judicial branch.

In ruling on a specific matter, a judge must not intrude on the respective legislative and executive powers of the other two branches of government, as defined by the Constitution. With respect to the legislative branch, a federal judge must give appropriate deference to the plain meaning of statutes enacted by Congress and to the underlying legislative intent. As directed by Supreme Court precedent, a federal judge also must give deference to the interpretations of the statutes and regulations that are within the responsibility of executive agencies to administer and enforce.

A judge has the obligation to decide the narrow case or controversy at bar not broader principles or policies. A judge is to decide each case based on the facts presented and the applicable statutes, regulations and judicial precedents. In so doing, it is essential that a judge respect *stare decisis*, particularly the decisions of the Supreme Court and the governing court of appeals.

AFFIDAVIT

I, Leo M. Gordon, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

December 1, 2005
(DATE)

Leo M. Gordon
(NAME)

Philomena C. Russo
(NOTARY)

PHILOMENA C. RUSSO
Notary Public, State of New York
No. 24-4955311
Qualified in Kings County
Commission Expires 12/15/09

Senator CORNYN. Thank you very much.
Judge Delgado.

STATEMENT OF AIDA M. DELGADO-COLON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO

Judge DELGADO-COLON. Thank you, Chairman. Certainly, I would like to join the statements made by the fellow nominees here and first of all thank the President for the nomination he has extended, this Committee for allowing me the opportunity of appearing before you here today, and certainly Resident Commissioner Luis Fortuno for the advice, support and encouragement he has given me throughout the process.

And if there is one thing I would like to do is to take this opportunity to use it to honor and render tribute to my parents, which certainly have been the guiding the force driving me through the pathway that has brought me before you here today, and besides that to acknowledge the spiritual presence of my father. I know he would have loved to be here today.

Aside from that, I must say that I am overwhelmed by the support and presence of the personnel from the Administrative Office, which I was not expecting. I have here also the Chief of the Magistrate Judge's Division, and I certainly thank them for their presence and support.

Thank you.

[The biographical information of Judge Delgado-Colon follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name** (include any former names used.)

Aida Milagros Delgado-Colón

2. **Address**: List current place of residence and office address(es).

Residence: San Juan, PR

Office: 150 Chardón St., Suite 470, Federal Building, San Juan, PR 00918-1767

3. **Date and place of birth.**

Date of Birth: *August 31, 1955*
Place of Birth: *Lares, PR*

4. **Marital Status** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Single

5. **Education**: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Pontifical Catholic University of Puerto Rico
School of Law
Ponce, PR
August 1977 - May 1980
Juris Doctor, Cum Laude - May 1980

University of Puerto Rico,
College of Agriculture and Mechanical Arts
Mayaguez, PR
August 1973 - May 1977
Bachelor's of Science Business Administration, Cum Laude - May 1977

6. **Employment Record**: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

December 1993 - Present:	*United States District Court for the District of Puerto Rico, San Juan, PR* *United States Magistrate-Judge*
January 2003 - May 2003: *January 2004 - May 2004:*	*Pontifical Catholic University of Puerto Rico* *School of Law, Ponce, PR* *Adjunct Professor*
August 1982 - December 1993:	*Office of the Federal Public Defender for the District of Puerto Rico, San Juan, PR*
March 1991 - August 1991:	*Acting Federal Public Defender*
August 1988 - December 1993:	*First Assistant Federal Public Defender*
August 1982 - July 1988:	*Assistant Federal Public Defender*
September 1980 - August 1982:	*Governor's Advisory Council on Labor Law, Commonwealth of Puerto Rico, Department of Labor and Human Resources*
July 1981 - August 1982:	*Director of Research and Investigations*
September 1980 - June 1981:	*Legal Investigator*

7. **Military Service**: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

The Student Federal Bar Chapter, Pontifical Catholic University School of Law named their student chapter: "The Aida M. Delgado-Colón Student Federal Bar Chapter" (October 2004).

Resolution 0102-51 issued by the University of Puerto Rico School of Law, in recognition of contribution and training to law school students participating at the Second Annual Trial Advocacy Competition held at the University of Detroit, Detroit, Michigan (2001).

Recognition by the Office of the Circuit Executive, Judicial Council of the First Circuit, for participating in District Court survey regarding the First Circuit Gender, Race and Ethnic Bias Task Forces. (Report published by Boston University Public Interest Law Journal at 9 B.U. Pub.Int.L.J. 173 (2000)).

Acknowledgment for the creation and implementation of a computer program to enable the District Court to analyze general and improper billing patterns under the Criminal Justice Act (2001).

Award for Professional and Humanitarian Services; Board of Directors, Círculo Cubano de Puerto Rico (Cuban Society of Puerto Rico) (1987).

Law Review, Member and Editor Pontifical Catholic University School of Law (1978-80).

9. **Bar Associations**: List all bar associations, legal or judicial-related committees 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.

PROFESSIONAL ORGANIZATIONS

Federal Bar Association	*1982-Present*
	Director 1994-95
Hispanic National Bar Association	*2005*
American Bar Association	*2005*
Federal Magistrate Judges Association	*1994-2003, 2005*
Women Judges Association	*2005*
Phi Alpha Delta Law Fraternity (Honorary Member)	*2000 - Present*
Puerto Rico Bar Association	*1981-2005*
Puerto Rico Association of Criminal Defense Lawyers	*1991-93*
	Secretary 1991-93
National Association Criminal Defense Lawyers	*1983-88*

U.S. DISTRICT COURT COMMITTEES AND LIAISON ASSIGNMENTS

Court Security Committee	*2005-Present*
Federal Bar Examination Committee	*1986-Present*
Local Rules Committee	*1991-Present*
Alternate Employee Dispute Resolution Coordinator	*1995-Present*
(designated in 1999 - previously Equal Employment Opportunity Coordinator)	
Interpreters and Court Reporters Committee	*1996-Present*
Planning Committee, Criminal Law Panel, First Circuit Judicial Conference, designation made by Chief Judge First Circuit Court of Appeals	*2000*
First Circuit Gender Bias Task Force	*1996-1999*
Criminal Justice Act Review Committee	*1994-1995*
Selection Committee, Chief, U.S. Pretrial Services Office	*1995*
Criminal Justice Act Panel Selection Committee	*1986 - 1991*

10. **Other Memberships**: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. **Court Admission**: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Puerto Rico	*January 1982*
U.S. District Court for the District of Puerto Rico	*March 1982*
U.S. Court of Appeals for the First Circuit	*February 1982*
U.S. Court of International Trade	*March 1983*
Supreme Court of the United States	*January 1984*
U.S. Court of Claims	*April 1993*

12. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

See Tab-#I. Translations will be provided

Articles:

"Derechos y Deberes de los Estados ante las Alteraciones de las Instituciones Políticas en el Sistema Contemporáneo" (The Rights and Duties of States Currently Facing Changes Affecting Political Institutions); Law Review, Catholic University School of Law, Ponce, PR, Vol. 18, No. 69, 70 (1978).

Co-authored:[1]

"Evaluación de la Jurisdicción, Deberes y Responsabilidades de la Comisión Industrial" (Evaluation of the Jurisdiction, Duties, and Responsibilities of the Industrial Commission). El Consejo Informa, Journal of the Governor's Advisory Council on Labor Law (November, 1981).

"Evaluación de la Jurisdicción, Facultades y Organización Administrativas del Negociado de Normas y Reglamentos del Departamento del Trabajo y Recursos Humanos." (Evaluation of the Jurisdiction, Authority and Administrative Organization of the Bureau of Rules and Regulations, Department of Labor and Human Resources). El Consejo Informa, Journal of the Governor's Advisory Labor Law (August, 1981).

[1] *While I served as Investigator, and then Director of Research, at the Governor's Advisory Council, the Research Team rendered reports to the Governor and the Council's Board of Directors on different subjects related to employment and labor law. Generally, I submitted a legal analysis of statutory provisions or proposed legislation, while other co-workers, such as economists and labor relations specialists, were responsible for analyses within their fields of expertise.*

"Propuesta para el Pago de Diferenciales de Salario Mínimo a Adolescentes." (Proposal for Payment of Minimum Wage Differentials to Adolescents). El Consejo Informa, Journal of the Governor's Advisory Council on Labor Law (May, 1981).

"Informe Especial al Gobernador Sobre los Planes de Salud para Empleados Gubernamentales." (Special Report to the Governor Regarding Health Benefits for Public Employees). El Consejo Informa, Journal of the Governor's Advisory Council on Labor Law (March, 1981).

"Consideraciones Técnicas Legales, Económicas y Sociales de la Ley de Cierre." (Technical, Legal, Economic and Social Considerations Concerning the Closing Law). El Consejo Informa, Journal of the Governor's Advisory Council on Labor Law (December, 1980).

***Columns**:*
"Employment Law"; El Consejo Informa, Journal of the Governor's Advisory Council on Labor Law; (Oct.-Nov. 1980); (Jan.-Feb. 1981); (Mar.-Apr. 1981); (May-Jun. 1981).

***Speeches (Constitutional Issues)**:*
*On August 27, 1996, I was guest speaker for the Federal Law Enforcement Officers Association (FLEOA). The speech addressed "Pretrial Considerations and Legal Standards for the Application of Search and Arrest Warrants." The presentation conformed to the structures of a seminar rather than a speech. There are handwritten notes of the outline and subjects addressed. The only available news report on the subject is attached at **Tab-#1**. The presentation was highlighted in the FLEOA Magazine, Winter 1996-97.*

13. **Health**: What is the present state of your health? List the date of your last physical examination.

I am in excellent health.

Date of last physical examination: June 14, 2005.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

December 1993 - Present: *United States Magistrate-Judge for the United States District Court, District of Puerto Rico. Appointed by designation of the U.S. District Court Judges for the District of Puerto Rico.*

Jurisdiction: *The United States Court for the District of Puerto Rico has original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States and civil actions as set forth in 28 U.S.C. §§ 1330 through 1369; and original jurisdiction in criminal matters exclusive of the courts of the states, of all offenses against the laws of the United States and such criminal matters as set forth in 18 U.S.C. §§ 3232 through 3244.*

A Magistrate-Judge's jurisdiction is conferred statutorily and consists of all powers and duties conferred or imposed by law or by the Rules of Criminal Procedure for the U.S. District Courts; the power to administer oaths and affirmations, issue orders for release or detention of persons pending trial, take acknowledgments, affidavits, and depositions; the power to conduct trials as statutorily provided; the power to enter a sentence for a petty offense and in class A misdemeanor cases where the parties consent, and any other duties that are not contrary to any provision of the law. See 28 U.S.C. § 636.

15. **Citations**: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

(1) ***Citations for the Ten Most Significant Opinions Written***

Copies of the Opinions are Found at Tab-#2

The selection of these cases illustrates the wide variety of legal areas encompassed within the Magistrate-Judge's jurisdiction.

***Cabrera v. Teatro del Sesenta, Inc.**, 914 F.Supp. 743 (D.P.R. 1995). Opinion and Order. This matter involved a dispute between Pablo Cabrera, a well-known playwright, and several renowned actors and actresses in Puerto Rico, the members of Teatro del Sesenta, who claimed to be co-authors of the play "La Verdadera Historia de Pedro Navaja" (itself a popular adaptation of "The Three-Penny Opera"). The case is significant not only because it was my first bench trial held within months of my designation, but also because of the quantum of testimonial and documentary evidence presented. It received extensive, daily, media coverage. Ultimately, although I was persuaded of the defendants' significant contribution to the work, I was bound to and did follow the strict mandates of the law, determining they were not "co-authors" under applicable statutory provisions.*

***Silver v. Shalala**, Civil No. 95-1597, 1997 WL 170660 (D.P.R. 1997). Report and Recommendation. My findings in this social security matter discuss two issues of first impression in the United States Court of Appeals for the First Circuit: whether petitioner was entitled to reimbursement of air ambulance expenses by his Medicare health insurance carrier and what is sufficient to satisfy the "suggestion of death" requirement under Fed.R.Civ.P. 25(a). My determination was approved, adopted and incorporated as the District Court's Opinion.*

***Zapata-Matos v. L & F Products**, Civil No. 95-1542(CCC/ADC) (D.P.R. 2000), aff'd, Zapata-Matos v. Reckitt & Colman, Inc., 277 F.3d 40 (1st Cir. 2002). Opinion and Order. After receiving consent by the parties to preside over this matter, I entered summary judgment for the defendants in this national origin discrimination case. My decision was affirmed by the First Circuit Court of Appeals which amply discusses my prior factual and legal determinations.*

***United States v. Rivera**, 912 F.Supp. 634 (D.P.R. 1996), Report and Recommendation. The Report and Recommendation was fully adopted and incorporated into the District Court's Opinion. After an evidentiary hearing, I determined a need to pierce the corporate veil in order to establish a corporate defendant's liability for attorney's fees. This enabled the District Court's efficient management of the case, and of government financial resources.*

***Nogueras-Cartagena v. United States**, 172 F.Supp. 2d 296 (D.P.R. 2001), aff'd No. 03-1113, 75 Fed. Appx. 795, 2003 WL 22225584 (Sept. 26, 2003). Report and Recommendation. I granted the defendant's motion to dismiss in an action for malicious prosecution and fraud brought by a former federal criminal defendant against the then-U. S. Attorney for the District of Puerto Rico. The Report and Recommendation was not only adopted and incorporated by the District Court in its Order, but also affirmed by the First Circuit Court of Appeals.*

***United States v. E.L.C.**, Criminal Case No. 03-59(HL) (D.P.R. 2003), aff'd, 396 F.3d 458 (1st Cir. 2005). Report and Recommendation. On June 27, 2003, after conducting an evidentiary hearing, I issued a Report and Recommendation for the transfer of juvenile E.L.C. to adult status. In doing so, I considered the juvenile's "chronologically subsequent criminal conduct for which he had been convicted, at state level, prior to his arrest on federal charges" under the criteria "prior delinquency record, social background, and juvenile's response to treatment effort." The Report and Recommendation was fully adopted by the District Court on October 7, 2003. On appeal the First Circuit Court of Appeals affirmed the District Court citing to the factual and legal analysis contained in the Report and Recommendation.*

***Nieto-Ramírez v. Chrysler Corp.**, Civil No. 97-2137 (D.P.R. Sept. 27, 2000). Opinion and Order. After an evidentiary hearing (Daubert Hearing), I granted the defendants' motion in limine seeking to exclude the testimony of plaintiff's expert. The case required the meticulous evaluation of scientific evidence, as well as the qualifications and methodology utilized by an accident reconstruction expert. The opinion also discusses a claim concerning spoliation of evidence.*

John Doe v. Roe, Inc., *Civil No. 00-2455(HL/ADC) (D.P.R. Sept. 30, 2002). Opinion and Order. After a two week trial, plaintiff prevailed in an action pursuant to the Age Discrimination in Employment Act (ADEA), having shown age discrimination and wrongful discharge under state law, 29 P.R. Laws Ann. § 185A. The jury awarded $234,409 in back pay and $712,000 in compensatory damages. Defendant, after verdict, filed a motion for entry of judgment as a matter of law, or for remittitur. I granted the remittitur and reduced the compensatory damages to $250,000. No appeal was undertaken by either party. The case was subsequently settled and as a result remains sealed.*

Perfumanía, Inc. v. Perfulandia, Inc., *279 F.Supp.2d 86 (D.P.R. 2003). Opinion and Order. Upon the parties partial consent for this Magistrate-Judge to rule upon a dispositive motion requesting injunctive relief in a copyright violation action, an Opinion and Order was issued granting injunctive relief.*

United States v. Lazu-Rivera*, Consolidated Criminal Case Nos. 03-249(JAG), 03-250(PG), 03-251(HL), 03-252(DRD), 2004 WL 3171128 (D.P.R. Dec. 29, 2004). Report and Recommendation. This is a Report and Recommendation ("R&R") issued in a series of consolidated criminal cases charging thirty-six defendants in a multi-kilogram quantity drug conspiracy. Twenty-four defendants moved for the suppression of Title III electronic records asserting legal deficiencies in the government's application for wire interception, violation of the terms within the Order authorizing interception, and violation of the statutory requirement of minimization. This R&R required factual and legal analysis of evidence on record and other evidence submitted for in-chambers examination, evaluation and analysis of progress interception reports, extensive legal research, and an ability to synthesize the allegations of all twenty-four defendants. It also contains a summary of applicable case law on the issues of necessity, minimization, interception period, and initiation of interception. Following objections by the defendants, on March 23, 2004, the District Court adopted the Report and Recommendation in its entirety.*

(2) ***Appellate Decisions, Decisions Reversed or Affirmed with Criticism of Substantive or Procedural Rulings***

Copies of the Opinions are Found at Tab-#3

Díaz-Gandía v. Dapena-Thompson, *90 F.3d 609 (1st Cir. 1996). The First Circuit Appellate Court reversed the granting of a summary judgment motion on the basis that there existed genuine issues of material fact in a case brought under the Veterans' Reemployment Rights Act.*

United States v. Zenón-Encarnación, *387 F.3d 60 (1st Cir. 2004). After a bench trial defendants were convicted of trespassing into military danger zone during a naval training exercise. Defendants appeal to the District Court, and the District Court affirmed the convictions. The defendants raised four issues on a subsequent appeal to the First Circuit Appellate Court. The appellate court ruled against defendants on three of the issues, but vacated the convictions and remanded the case for an evidentiary hearing on the issue of whether the danger zone regulation complied with a food fishing industry provision. While so doing, in a two-Judge concurrence, the Appeals Court expressed concerns about the soundness of prior court precedents on this issue, and suggested a willingness to entertain a government's petition for rehearing en banc.*

(3) ***Citations for Significant Opinions on State or Federal Constitutional Issues***

Copies of the Opinions are Found at Tab-#4

Zapata-Matos v. Reckitt & Colman, Inc., *277 F.3d 40 (1st Cir. 2002). After receiving consent by the parties to preside over this matter, I entered summary judgment for the defendants in this national origin discrimination case. My decision was affirmed by the First Circuit Court of Appeals which amply discusses my prior factual and legal determinations.*

Crespo-Hernández v. Jesús-Malaret, *Civil No. 04-1209(CCC). Report and Recommendation. I submitted a Report and Recommendation in a claim brought under 42 U.S.C. § 1983 alleging a violation of plaintiff's Fourth and Eighth Amendment rights under the Constitution of the United States and challenging the constitutionality of the Puerto Rico Mental Health Law, 24 P.R. Laws Ann. § 61551. I recommended that the District Court*

dismiss plaintiff's federal claims and the constitutional challenges to state law. The District Court fully adopted the Report and Recommendation and entered its Order on March 30, 2005.

***Vélez-Sotomayor v. Progreso Cash and Carry, Inc.**, 279 F.Supp. 2d 65 (D.P.R. 2003). Opinion and Order. In an action brought by an employee under Title VII and Puerto Rico law against her supervisor and employer for religious and pregnancy discrimination, the defendants' motion for summary judgment was denied in part (as to religious and pregnancy discrimination) and granted in part (as to the Title VII issues). Once the Opinion and Order was issued, the case settled shortly before trial.*

***United States v. Luna-Rojas**, 28 F.Supp.2d 54 (D.P.R. 1998). Report and Recommendation. The case addresses a search and seizure issue. I concluded that consent to search was provided by defendant's relatives, and further validated a protective sweep. The Report and Recommendation was fully adopted, incorporated into and constitutes the opinion of the District Court.*

***United States v. Sostre-Navarez**, 279 F.Supp.2d 82 (2003). Opinion and Order. A defendant charged with failure to pay past due child support demanded a jury trial in a petty offense (Class B Misdemeanor). The Opinion and Order addresses the interplay between 8 U.S.C. § 228(a)(1) and Fed.R.Crim.P. 58, and concludes there is no right to a jury trial for petty offenses. No appeal was undertaken.*

16. **Public Office**: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

August 1982 - July 1988:	*Assistant Federal Public Defender for the District of Puerto Rico, San Juan, PR (Appointed)*
August 1988 - December 1993:	*First Assistant Federal Public Defender for the District of Puerto Rico, San Juan, PR (Appointed)*
March 1991 - August 1991:	*Acting Federal Public Defender for the District of Puerto Rico, San Juan, PR (Appointed)*

17. **Legal Career:**

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

1. 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;

No.

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

No.

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

December 1993 to Present:	*United States Magistrate-Judge, United States District Court for the District of Puerto Rico #150 Chardon Ave. San Juan PR 00918*
	Federal Public Defender's Office 241 F.D. Roosevelt Ave San Juan, PR 00918
August 1982 - July 1988:	*Assistant Federal Public Defender for the District of Puerto Rico*
August 1988 - December 1993:	*First Assistant Federal Public Defender for the District of Puerto Rico, San Juan, PR*
March 1991 - August 1991:	*Acting Federal Public Defender for the District of Puerto Rico, San Juan, PR*
July 1981 - August 1982:	*Puerto Rico Department of Labor 505 Muñoz Rivera Avenue Hato Rey, Puerto Rico 00918 Director of Research and Investigations, Governor's Advisory Council on Labor Law*

September 1980 - June 1981: *Legal Investigator, Governor's Advisory Council on Labor Law, Commonwealth of Puerto Rico, Department of Labor and Human Resources*

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Investigator, ***September 1980 - June 1981***
Governor's Advisory Council on Labor Law,
Commonwealth of Puerto Rico Department of Labor and Human Resources

The Council was an office attached to the Commonwealth of Puerto Rico's Department of Labor that conducted research, analyzed statutes, proposed legislation and submitted recommendations to the governor and others in the executive branch. During this period of time I was not in the private practice of law, nor was I required to appear before administrative agencies, or state or federal courts.

As an Investigator, I researched and compiled evidence to determine the feasibility of legislation or gubernatorial reorganization, and its possible impact upon the community. I conducted field investigations, conducted interviews and engaged in legal research, in order to determine the constitutionality and legal impact of legislation and regulations concerning the minimum wage and workman's compensation law.

Director of Research, ***July 1981 - August 1982***
Governor's Advisory Council on Labor Law,
Commonwealth of Puerto Rico Department of Labor and Human Resources

As Director of Research, I supervised twenty-three employees, including attorneys, economic consultants, economists, urban planners, labor policy experts, and clerical staff, and I substituted for the Executive Director in all duties and responsibilities during his absence.

I participated with the President and Executive Director of the Council during meetings with labor unions and government representatives, provided legal advice and coordinated legal research in all matters related to labor law and arbitration. I also supervised the drafting of proposed legislation, rules and regulations, reports, memoranda, and other legal documents regarding the workforce and the public and private sector economy. Finally, during this period, I was Editor of the bimonthly Journal of the Governor's Advisory Council on Labor Law.

Assistant Federal Public Defender, ***August 1982 - July 1988***
Office of the Federal Public Defender for the District of Puerto Rico

As an Assistant Federal Public Defender, I provided legal assistance and representation to indigent defendants charged with felonies and misdemeanors before the U.S. District Court. In that capacity, I conducted investigations, performed legal research, and formulated strategy during each phase of criminal litigation, including pretrial motion practice, plea bargaining negotiations, trials, preparation for sentencing proceedings, and post-sentence representation. In addition, I prepared appellate briefs and participated in oral arguments before the U.S. Court of Appeals for the First Circuit, and I drafted and filed petitions for certiorari before the Supreme Court of the United States.

While continuing to manage my caseload, I also served as Secretary to the Committee for the Selection of CJA Panel Attorneys (1988-1991), which formulated amendments to the Local Plan for the Management of the CJA Panel of Attorneys; as Health Coordinator Officer (1984-1993); as Payroll Certifying Officer (1986-1993); and as Official Liaison to the United States Probation Office (1985-1993).

First Assistant Federal Public Defender, ***August 1988 - December 1993***
Office of the Federal Public Defender for the District of Puerto Rico

While responsible for the management and trial of cases assigned, additional administrative duties were undertaken. My administrative duties as First Assistant included substitution for the Federal Public Defender during his absence, submission of Annual Report of Operations and Budget Proposal, case assignment among four attorneys, recommendation

of attorneys eligible for court appointment, maintenance of the daily calendar, and general coordination with the U.S. Attorney's Office, U.S. Pretrial Service Office, and the U.S. Probation Office.

Acting Federal Public Defender, ***March 1991 - August 1991***
Office of the Federal Public Defender for the District of Puerto Rico

After being appointed by the U.S. Court of Appeals for the First Circuit as Acting Federal Public Defender, I executed all duties and responsibilities of the Federal Public Defender, including supervision and management of all personnel, oversight of all operational and case-related activities, and coordination with other federal agencies and with the Administrative Office of the United States Courts. I also represented the Office before District Court committees, as well as federal and local agencies.

Adjunct Professor, ***January 2003 - May 2004***
Federal Forensic Practice (Civil and Criminal),
Pontifical Catholic University, School of Law, Ponce, PR

I designed and implemented a two-credit seminar focusing on federal civil and criminal trial practice, including discovery techniques, direct and cross-examination, opening and closing statements, and evidentiary considerations. I supervised and evaluated students' performance during simulated exercises and trials. This experience did not involve actual clients or court appearances.

United States Magistrate-Judge, ***December 1993-Present***
United States District Court for the District of Puerto Rico

Civil Matters: *I regularly preside over jury and bench civil trials encompassing the full panoply of federal causes of action, including federal tort claims, employment and labor legislation, products liability, copyright, personal injury, medical malpractice, matters arising under international conventions and treaties, and civil rights. I am engaged in the full pretrial management of civil cases, from filing of the Complaint through settlement or trial, the scheduling and management of all pretrial conferences, supervision of the*

discovery process, review of Pretrial Orders, presiding over pretrial hearings and conducting mediation sessions.

I have also participated, upon referral, assuring compliance with Consent Decrees among parties in a civil rights suit involving state juvenile institutions, and in monitoring complex civil cases, such as class actions, copyright claims, litigation involving multiple plaintiffs and defendants regarding employment and political discrimination. I have a wide variety of other duties in civil matters, including: Regular Jury and Grand Jury panel qualification and selection; Naturalization ceremonies; settlement claims of minors; Social Security appellate review; state and federal Habeas Corpus proceedings; and prisoner-related matters. I have been entrusted with the management, investigation, and resolution of sensitive judicial or administrative issues, such as violations of Grand Jury secrecy requirements, alleged ethical violations by members of the Criminal Justice Act ("CJA") Panel of Attorneys and other members admitted to the Bar, and employment disputes within the District Court and related federal agencies.

Criminal Matters: *I preside, upon referral, over the full pretrial management of multi-defendant felony cases, including jury selection. In addition to conducting the Initial Appearance, Bail Hearing and Arraignment, I schedule and manage all pretrial conferences and hearings, supervise the discovery process, preside over evidentiary, ethical, mental competency, suppression hearings, and juvenile proceedings, and rule on dispositive and non-dispositive motions.*

I have significant involvement in the intake, management and final disposition of criminal misdemeanor cases arising on federal premises, such as the Veterans Administration Hospital, Metropolitan Detention Center - Guaynabo, military installations, and United States Post Offices. Finally I have a statutorily-required range of duties in the criminal investigative process, including the determination of probable cause for the issuance of search, seizure, forfeiture and arrest warrants, the use of pen registers and track and trace devices, petitions for the production of toll records, and interception of electronic signals.

Administrative Duties: *My responsibilities include the review, re-drafting and re-numbering of the Local Rules for the District of Puerto Rico, as amended (April 2004); the review and*

re-drafting of the "Rules, Regulations and Procedures for Management of the Criminal Justice Act Panel" (1994-1995); the development and implementation of a program to monitor CJA vouchers, enabling the prompt detection of fraudulent claims; the development of a uniform format for Reports & Recommendations following guilty plea proceedings before a U.S. Magistrate-Judge; service as the Alternate Employment Dispute Resolution Coordinator (1999-Present; formerly the Equal Employment Opportunity Officer (1995-1999)) with responsibility for implementation and administration of the District's Employment Dispute Resolution Plan; participation as an organizer and/or speaker for most of the Continuing Legal Education Programs sponsored by the District Court and the Federal Public Defender's Office; assistance to the Committee on International Judicial Relationships (AO) and the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) in the training of various judges from Mexico, Panamá, Costa Rica and Colombia regarding federal statutes and local judicial reform program; serving as liaison for the "Courtroom in the Classroom" Program and District Court Outreach Program, and the development of agendas for the exposure of elementary, intermediate, high school, university, and law school students, along with civic organizations, to the structure of the federal court system, related federal agencies, and courtroom technology.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my entire tenure at the Federal Public Defender's Office, I was exclusively involved in criminal litigation in federal court and provided legal assistance to indigent defendants charged with felonies and misdemeanors before the United States District Court.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During my tenure at the Federal Public Defender's Office I appeared in Court almost daily.

2. What percentage of these appearances was in:
   (a) federal courts;

   100%

   (b) state courts of record;

   0%

   (c) other courts.

   N/A

3. What percentage of your litigation was:
   (a) civil;

   0%

   (b) criminal.

   100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Tried five felony cases to verdict. In two of those cases I acted as chief or sole counsel for defendant. In the remaining three, I was associate counsel.

5. What percentage of these trials was:
   (a) jury;

   100% of felony cases tried.

(b) non-jury.

I tried dozens of misdemeanor cases.

18. **Litigation**: Describe the ten most significant litigated matters which you personally handled. 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) ***U.S. v. Alfred Shaw***
Criminal Case No. 88-14(JAF)
May 1, 1988 - July 14, 1988
U.S. District Judge José A. Fusté
U. S. District Court for the District of Puerto Rico

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Frank Inserni
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(787)763-3851

Carlos Lopez De Azúa
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The United States Coast Guard intercepted a motor vessel on the high seas, and all alleged crew members were criminally charged and tried for the importation of controlled substances. I was sole counsel for defendant Shaw, responsible for investigating the case, designing the pretrial and trial strategy, and representing Mr. Shaw during trial. Mr. Shaw testified on his behalf, and that of a co-defendant, asserting that they were Jamaican citizens, attempting to enter the United States illegally. I successfully secured testimony from the vessel's captain for the limited purpose of establishing that Mr. Shaw was not a crew member. Following a five-day jury trial, Mr. Shaw was acquitted.

2) ***U.S. v. Jorge W. Vargas, Criminal Case No. 91-288(CC)***
August 7, 1991 - February 12, 1992
U.S. District Judge Carmen C. Cerezo
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
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Corrections Administrator
Carr. #21, Bo. Monacillos
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(787)273-6464

Counsel for Co-defendants:
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Mr. Vargas and two other individuals were charged with aiding and abetting in the importation of cocaine. Customs and Coast Guard officials tracked an airplane traveling north from Colombia, then monitored a number of bales dropped into the ocean, with Forward Looking Infra Red ("FLIR") technology. The defendants were arrested onboard

an offshore fishing vessel. The government's theory depicted them as responsible for placing chemical sticks in the water, to mark the drop site for the drug cargo and for retrieving the bales of cocaine for subsequent distribution.

I was sole counsel for defendant Vargas, and coordinated the discovery process, ocular inspections of the boat and the cocaine bales retrieved, and the investigation of the FLIR's video recordings. I organized the distribution of work among counsel for the co-defendants. All three defendants were acquitted by a jury after a one-week trial.

3) ***U.S. v. Rosa M. Fernández***
Criminal Case No. 89-213(JP)
July 3, 1989 to December 1, 1989
U.S. District Judge Jaime Pieras
U. S. District Court for the District of Puerto Rico

Counsel for the Government:

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Ernesto Hernández-Milan
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San Juan, PR 00918
(787)758-9595

Defendant Fernández was in transit from Colombia to Spain when drugs were found concealed in her clothing. At the time criminal charges were filed, she was pregnant and gave birth while in pre-trial detention. I was the sole attorney assigned to this case. The case required extensive litigation regarding conditions of confinement, bail, and the pre-trial detainee's right to breast feed her newborn. The case was fully prepared for trial, but on the eve of trial a plea agreement was reached. Upon entering a guilty plea, Ms. Fernández was sentenced to a six-month probationary term. The case received extensive media coverage given the sensitive issues involved.

4) ***U.S. v. Claribel Castillo***
Criminal Case Nos. 88-253(GG) (Indictment); 89-138(GG) (Information)
June 27, 1988 - November 30, 1989
U.S. District Judge Gilberto Gierbolini
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
Guillermo Gil
Senior Litigation Counsel
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Defendant Castillo was charged as a member of a large-scale drug distribution ring engaged in the importation, distribution and sale of marihuana and cocaine. The ring leader, and the supervisors in the organization were her close relatives. I was the sole counsel assigned to her defense. The case involved a lengthy discovery period, and extensive investigation of the legal implications of initiating proceedings within the Witness Protection Program. Ms. Castillo while declining to enter into the Witness Protection Program subsequently testified against over ten codefendants, including her brother-in-law and two oldest brothers. She entered a guilty plea to an Information, and was sentenced to a four-year probationary term.

Representation of Ms. Castillo involved keeping her abreast of the evidence provided during discovery, engaging in an extended plea bargaining process, and discussing sentencing alternatives as well as the implications of testifying at trial. In addition, I was able to counsel Ms. Castillo extensively, concerning educational and family matters. The case was widely covered by the local news media, and preparation for sentencing was especially intense. Ms. Castillo has maintained contact following her sentence and probation term; she completed a college education, received a doctoral degree as a mechanical engineer,

and now works for a private corporation and teaches at an Engineering School. I have always considered this a case to be an illustration of how law and justice can converge.

5) ***U.S. v. Esperanza Aguilar***
Criminal Case No. 90-325(PG)
September 24, 1990 - July 26, 1993
U.S. District Judge Juan Pérez-Giménez
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
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San Juan, PR 00918
(787)250-1420

Co-counsel for Defendant:
Rachel Brill
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2 Ponce de Leon Ave.
San Juan, PR 00918
(787)753-6131

Defendant Aguilar was charged with possession and importation of controlled substances, involving the receipt of a package in the mail. Ms. Aguilar had a prior drug conviction under similar circumstances. I assisted lead counsel in the pre-trial stages, and in the litigation concerning Ms. Aguilar's release on bail and the admissibility of the prior conviction pursuant to Fed. R. Evid. 404(b). I also took the lead in the investigation of additional witnesses, and the preparation of those witnesses and the defendant for their testimony during trial.

Ms. Aguilar was first tried in March, 1991. I assisted lead counsel throughout the entire procedure, which entailed last-minute investigations of new theories that developed during trial, and the use of a United States Probation Officer as a witness for the defense. The jury acquitted Ms. Aguilar of the importation charge, but could not agree on the possession charge. After lead counsel unsuccessfully litigated a double jeopardy claim on appeal, the case was re-tried in June, 1993. I again assisted lead counsel during trial and in the presentation of witnesses. Ms. Aguilar was convicted of the possession charge, but that conviction was later overturned on appeal, based upon the erroneous admission of the Rule 404(b) evidence. United States v. Aguilar, 58 F.3d 796 (1st Cir. 1995).

6) ***U.S. v. Héctor Ríos-Velázquez***
Criminal Case No. 90-130(PG)
November 2, 1990 - October 6, 1992
U.S. District Judge Juan Pérez-Giménez
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
Salixto Medina Malavé
(retired, whereabouts unknown)

Counsel for Co-defendants:
Frank Inserni
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Carlos López De Azúa
1663 Ponce de Leon
San Juan, PR
(787) 724-2868

Joseph Laws
Federal Public Defender's Office
241 Franklin D. Roosevelt Ave.
San Juan, PR 00918-2441
(787) 281-4922

I was sole counsel for defendant Ríos-Velázquez, charged in a multi-defendant, multi-kilogram drug conspiracy. This was one of the first multi-defendant cases brought in our jurisdiction, involving years of video surveillance and Title III (electronic) interceptions. The discovery and pretrial stages required extensive litigation regarding the electronic interception and surveillance and also the length of the pretrial detention.

During pretrial stages, I coordinated the provision of medical, mental health and drug rehabilitation services needed by defendant, and in so doing, I developed a compelling record regarding Mr. Rios' family and medical needs, and his overall prognosis. Securing a clear definition of Mr. Rios' minor role, enabled the defense to reach an agreement with the United States and avoid a prolonged period of incarceration. He was ultimately sentenced to the time he had already served while awaiting a trial date (approximately two years).

7) ***U.S. v. Carlos Rodríguez-Patiño***
Criminal Case No. 92-412(JAF)
November 29, 1992 - September 23, 1993
U.S. District Judge José A. Fusté
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
Rosa E. Rodriguez
First Assistant, U.S. Attorney's Office
District of Puerto Rico
1201 Torre Chardón
350 Carlos Chardón Ave.
San Juan, PR 00918
(787)766-5656

The district court relieved prior trial counsel, and appointed me as sole counsel to represent Mr. Rodríguez-Patiño, who was facing drug importation charges. I was responsible for overseeing the discovery process, and seeking and obtaining approval for expert services in support of a mental defect defense. The case involved extensive litigation regarding mental health issues and the testimony of experts.

While the case was pending trial, Mr. Rodríguez-Patiño attempted suicide twice, and then decided, consistent with his psychiatrist's and psychologist's advice, that he could not endure the distress caused by a jury trial. The quantum and quality of the medical health reports as presented at an evidentiary hearing was overwhelming, leading to successful plea bargaining, a guilty plea, and the imposition of a twenty-month term of imprisonment.

8) ***U.S. v. Joey Camacho, Criminal Case No. 91-208(JAF)***
May 30, 1991 - July 30, 1991
U.S. District Judge José A. Fusté
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
Peter Calderón
Estancia Chica
Calle 93
Bogota, Colombia
(031)218-4569

Co-counsel for Defendant:
Miguel Nogueras
Federal Public Defender's Office
1701 W. Business
Highway 83
McCallen, TX 78501
(956) 630-2995

Mr. Camacho was charged with drug distribution on postal premises. As this case was tried, I was performing as the Acting Federal Public Defender, supervising and participating not only in this case but in two others that were being tried simultaneously by members of the office. Although another Assistant actually tried the case, I was responsible for directing the discovery process, designing the defense strategy, coordinating and preparing the defense witnesses, including the testimony of defendant Camacho, were he to be called to testify. While trial was on-going I was responsible for fine tuning the case developments. The "roadmap" that I prepared anticipated the progress of the trial, and I was able to have significant participation in the case, without being physically present at all times. Defendant Camacho was acquitted after trial.

9) ***U.S. v. Daniel J. Maravilla, Criminal Case No. 87-161(HL)***
951 F.2d 412 (1st Cir. 1991), cert. denied, 112 S.Ct. 1960 (1992)
September 28, 1990 - January 29, 1991
U.S. District Judge Hector Laffitte
U.S. District Court for the District Of Puerto Rico

Counsel for the Government:
José A. Quiles
13450 SW 3rd St., Apt. 314
Pembrook Pines, FL 33027
(954) 438-9962

Co-counsel for Defendant:
Irma López-Defilló,
San Patricio Office Center
No. 7 Tabonuco St., Suite 401
Guaynabo, PR 00966
(787)749-4388

After a jury trial, the defendant, a former U.S. Customs Officer was convicted of six counts relating to the robbery and murder of a Dominican national transporting money into the United States. Mr. Maravilla appealed his sentence, which was affirmed in part and reversed in part. I was appointed to the matter for resentencing, which involved significant research and litigation concerning a district judge's ability to aggregate a total sentence by ordering terms to be served either consecutively or concurrently. After Mr. Maravilla appealed his re-sentence, I was responsible for drafting the brief and arguing the case to the First Circuit. The appellate court affirmed the judgment of the trial court. I drafted and filed a petition for certiorari before the U.S. Supreme Court on his behalf. The petition was denied.

The complexity of this case centered not only on the legal issues but also on the challenging personality of Mr. Maravilla, as well as on the demanding schedules set by the district court and court of appeals for addressing the substantive issues involved.

10) ***U.S. v. Evelyn Santiago***
Criminal Case No. 90-370(CC)
November 21, 1990 -May 26, 1992
U.S. District Judge Carmen C. Cerezo
U. S. District Court for the District of Puerto Rico

Counsel for the Government:
Guillermo Gil
Senior Litigation Counsel
U.S. Attorney's Office
District of Puerto Rico
1201 Torre Chardón
350 Carlos Chardón Ave.
San Juan, PR 00918
(787)766-5656

Co-counsel for Defendant:
Irma López-Defilló,
San Patricio Office Center
No. 7 Tabonuco St., Suite 401
Guaynabo, PR 00966
(787)749-4388

Ms. Santiago, along with thirty other defendants was charged in a large-scale drug smuggling/importation venture. Ms. Santiago was the common law wife of the ring leader. I acted as lead counsel for Ms. Santiago organizing the voluminous discovery and attending a variety of court hearings dealing with the large amount of evidence arising from surveillance, confidential sources and cooperating defendants.

Ms. Santiago entered into a cooperation agreement, and thereafter my representation focused upon preparation for sentencing. I met with the client and her family on numerous occasions and engaged in extensive plea negotiations with the lead prosecutor. Ms. Santiago was sentenced to a four year probation term. Ms. Santiago rehabilitated herself and successfully completed her probationary term.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Unquestionably, the most significant legal activity I have pursued has been my service, since December, 1993, as a United States Magistrate-Judge. In this capacity, I have presided over bench and jury trials, engaged in the full pretrial management of civil and criminal cases, conducted mediation, assisted the district court by ensuring compliance with a consent decree, and participated in court governance. Each of these aspects of the job has presented its own challenges and accomplishments.

***Presiding over trials** – whether bench or jury – is the most public judicial function. Despite the proficiency gained over the past eleven years, each trial experience is a new one, involving a different set of personalities and legal issues. I have a very active docket of consent cases and cases under full pre-trial management. The biggest challenge I have faced has been to learn and master areas of the law that in 1993 were entirely new to me, such as copyright principles, and political discrimination standards. My biggest satisfaction has been an over 95% affirmance rate following district court or appellate review.*

***Pretrial management** has allowed for ample exposure to complex discovery and evidentiary issues, the resolution of disputes by ruling upon dispositive motions, and the overseeing of settlement process. In Fiscal Year 2004 alone, I was responsible for the disposition of 33.3% of the total settlement and pretrial conferences and evidentiary hearings held in civil cases and that were reported among all four Magistrate-Judges in the District. With regard to criminal cases, I have had the unique opportunity of being assigned to conduct the full pretrial management of multi-defendant conspiracy cases, many of which have involved literally dozens of defendants each[2]. In the course of setting discovery and motion schedules, ruling upon oral and written motions on a full variety of criminal and constitutional issues,*

[2]*U.S. v. Solano-Moreta, Criminal Case No. 95-160, (37 defendants); U.S. v. Ayala, Criminal Case No. 97-82 (79 defendants); U.S. v. Lazú-Rivera, Criminal consolidated Case Nos. 03-249; 03-250; 03-251; 03-252 (46 defendants); U.S. v. Galiany-Cruz, Criminal Case No. 03-83 (17 defendants); U.S. v. Cedeño-Rosado, Criminal Case No. 03-93 (9 defendants); U.S. v. Villegas, Criminal Consolidated Nos. 04-50; 04-51, 04-52, 04-53 (40 defendants).*

conducting change of plea hearings, and presiding over jury selection, I have developed a familiarity with these types of cases, and a proficiency for avoiding any backlog. During Fiscal Year 2004, I was responsible for handling approximately 40% of initial case hearings (initial appearances, arraignments and bails), 30% of the dispositive motions reported as resolved, 40% of all motion hearings held, over 50% of all pretrial nondispositive motions ruled upon, and 76% of all status and pretrial conferences conducted by all four Magistrate-Judges in the district.

***Mediation** of employment dispute and malpractice cases has proven to be a successful tool to resolve complex cases, saving the parties significant amounts of money and resulting in more effective management of the court's time and human resources. Recently, after a series of joint and individual sessions with the parties, I mediated a complex malpractice case involving the death of three infants and serious permanent neurological damage to a fourth surviving infant. Several insurance companies and approximately twelve attorneys were involved. The case had been on the district court's docket since 1997, before it was referred to me in 2004. Mediation culminated in the case being settled for $3.3 million dollars, in May, 2005.*

***Consent Decrees** - I also assisted the district court in overseeing compliance with a consent decree in United States v. Commonwealth of Puerto Rico, Civil No. 94-2080 (CC), a civil rights case involving juvenile detention facilities. My jurisdiction and role was limited to supervising and ensuring compliance with the terms and conditions of a consent decree, assisted by a Monitor who was jointly selected by the parties. I held bimonthly status conferences, and handled issues related to every aspect of penal litigation. Those issues included overcrowding, prison facilities, health services, rehabilitation programs, special education, staffing, violent incidents and security, among other. During the over four years I supervised the case, I remained in close communication with the presiding district judge, ruled upon non-dispositive issues, defined and monitored the case development and submitted Reports and Recommendations after holding evidentiary hearings. This experience served immeasurably to refine and improve my case management skills and problem-solving approach to ensuring the prompt resolution of controversies.*

Court Governance *- As a Magistrate-Judge during the past eleven years, I have also derived great professional satisfaction from being appointed to a large number of court committees pursuing various directives (See Part I, Question No.9). This has enabled me to gain vast knowledge on the structure, duties and performance of all court dependencies, and to have substantial input on matters relating to court governance. As a significant achievement in this area, I can point to my efforts to redraft, restructure, and renumber the Local Rules for the District, which required synthesizing suggestions from members of the bar, the court, and all of its dependencies, and then organizing the rules to correspond, as required, with the Federal Rules of Civil and Criminal Procedure. It is also worth noting my designation as Alternate Employment Dispute Resolution Officer which carries the responsibility of overseeing a workplace free of discriminatory practices and my participation in the Federal Bar Examination Committee which pursues the objective of ensuring admission to the bar of well-qualified attorneys.*

Outreach Programs *- In addition to my duties as a Magistrate-Judge in the District of Puerto Rico, I am proud of my participation and coordination with the outreach programs sponsored by the Puerto Rico District Court, the Court of Appeals for the First Circuit, the Administrative Office of the United States Courts, and the U.S. Department of Justice. Participation in these programs has strengthened my belief in and commitment to our system of justice, while exposing others to its great benefits. The opportunity to assist foreign judicial officers, prosecutors and defenders in countries such as Colombia, Perú, Mexico, Costa Rica, Guatemala and Panamá with the implementation of their judicial reform programs, fully supported by the United States government, has allowed for the extremely rewarding opportunity to see first-hand how reform to a foreign judicial structure is implemented, and how a nation's population is directly affected.*

Criminal Litigation *- Regarding significant legal activities during my tenure at the Federal Public Defender's Office, and apart from the specific cases described in the answer to Question No. 18, I strived to treat each case and each defendant as different and unique. It was during this period that I gained a deep appreciation for the need for comprehensive investigation – of individual circumstances and legal principles – and for the benefits of negotiated agreement following such investigation. My positions as First Assistant and Acting Federal Public Defender gave me the opportunity to participate in the administration*

of an office that served as the vanguard in the district, not only for the protection of an accused individual's constitutional rights, but also for instruction about the increasingly specialized skills necessary for performing those duties in light of the United States Sentencing Guidelines and other congressional mandates.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have never been in the private practice of my profession. Therefore, there are no arrangements for future income or based upon professional services. At the present time I participate and invest in the Thrift Savings Plan and the Federal Retirement Program (CSRS). I have a 12.5% interest participation in a family owned business. While no income is derived from the same, any future sale of the business inventory will generate as 12.5% participation of sale proceeds.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Within our District, the Clerk of Court keeps records and information, per judicial officer, identifying categories of litigation and financial entities as to which any officer may have a conflicting interest. At the District Court level this constitutes the first level of scrutiny.

During the past eleven and one-half years, and while performing as a Magistrate-Judge, in identifying potential conflicts of interest I have guided myself by the Code of Conduct for the U.S. Judiciary and the Rules and Regulations approved and enforced by the Judicial Conference.

In the past I have abided by this Code of Ethics and the Rules and Regulations of the Judicial Conference and will continue to abide by them in the future.

3. 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.

4. 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, patents, 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 (AO-10).

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10 Rev. 1/2004	**FINANCIAL DISCLOSURE REPORT** Calendar Year 2004	**Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)**

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
DELGADO-COLON, AIDA M	DISTRICT COURT OF PUERTO RICO	10/28/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) DISTRICT JUDGE - NOMINEE	5. ReportType (check appropriate type) (•) Nomination, Date 10/25/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 9/30/2005
7. Chambers or Office Address SUITE 470, FEDERAL BLDG. 150 CHARDON AVENUE SAN JUAN, PR 00918	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	ADJUNCT PROFESSOR	PONTIFICAL CATHOLIC UNIVERSITY OF PUERTO RICO
2.		

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

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DELGADO-COLON, AIDA M	10/28/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	Teaching at: Pontifical Catholic University of Puerto Rico	$2,600.00
2.	2003	Teaching at: Pontifical Caholic University of Puerto Rico	$2,600.00

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

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

	DATE	SOURCE AND TYPE
1.		N/A

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DELGADO-COLON, AIDA M	10/28/2005

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
DELGADO-COLON, AIDA M	10/28/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Caribe Federal Credit Union	B	Dividend	K	T	EXEMPT				
2. IRA - Coop. Seguros de Vida (Annuity Contract)	B	Interest	K	T					
3. Fidelity Invesment Asset Manager	A	Dividend	J	T					
4. Opportunity Funds/Wells Fargo Adv. Funds (Prev. Strong)	B	Dividend	K	T					
5. Oriental Bank-Investors IRA	A	Dividend	J	T					
5. Oriental Bank-Investors IRA	A	Dividend	J	T					
7. Equitable: Alliance Common Stock/Mercury basic	None	None	J	T					
3. Oriental Bank-Investors IRA	A	Dividend	J	T					
). Banco Popular-6 (CD) IRAS	B	Interest	K	T					
10. xCoop. Ahorro y Credito/Value Equity	E	Interest	K	T					
11. Oriental Bank & Trust-Diversified Growth IRA	B	Dividend	J	T					
12. Banco Popular-CD	A	Interest	K	T					
13. Real Estate Property #1 (12.5% Interest)	None	None	M	Q					
14. Real Estate Property #2 (12.5% Interest)	None	None	M	Q					
5. Interest in Business (12.5%)	None	None	M	W					
6. Oriental Bank Trust - CD-IRA	A	Interest	J	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DELGADO-COLON, AIDA M	10/28/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

1. Caribe Federal Credit Union; San Juan, P.R. (Cash on hand)

2. IRA is composed of funds invested in values or bonds issued by the Commonwealth of Puerto Rico.

3. Fidelity Asset Manager - On the equity portion (54.4%) of the portfolio it invests in approximately 1,847 different stocks. A 31.3% of the portfolio is invested in bonds of which an even distritution (50%) is allocated between U.S. bonds and different corporations. A 14.3% is invested in money market.

4. The funds now managed by Wells Fargo, Advantage Funds were previously managed by Strong Funds. The transfer of brokerage results from a company merge. The Opportunity Funds are invested primarly in mid-size companies, blending the type of investment (Ex: Value & Growth).

5. Investors IRA, Oriental Bank and Trust.

6. Investors IRA, Oriental Bank and Trust.

7. Equitable Life Insurance: (Flexible Premium Life Insurance Incentive Life; composed of Alliance Common Stock and Alliance Money Market.

8. Investors IRA, Oriental Bank & Trust: Balance was transferred to a CD-IRA with Banco Popular on 5/17/05. The Oriental Bank account matured on 4/30/05. Its balance is part of the aggregated value reported for Banco Popular-CD IRAs under Item #9. So is the IRA account opened with Banco Popular as of 4/06/05.

9. Banco Popular de P.R. - accounts are at a fixed interest and are not invested in market.

10. In late 2001 or early 2002, I found out that my father had opened this savings account under my name. Thus, it was reported in the A0-10 financial reports of 2002-2004. Upon my father's death on January 20, 2003 said funds were transferred under the estate and/or my mother's name.

11. Funds were converted on 5/19/05 to a CD-IRA account with Oriental Bank & Trust (now listed under Item #16).

12. CD Account, Banco Popular de P.R. I appear as co-signer/co-owner.

13. Real Estate Property No. 1 - Residential Property: (12.5% Interest). Appraisal date: August 6, 2003.

14. Real Estate Property No. 2 - 29 acres of land: (12.5% Interest). Appraisal date: August 6, 2003.

15. Family Business now operated by a relative. My interest of participation amounts to a 12.5%. Have no participation in daily operation of the business or managerial decisions. No income or benefits are being received.

16. Account opened on 5/19/05 and includes the amounts rolled-over from account under Item #11.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DELGADO-COLON, AIDA M	10/28/2005

IX. CERTIFICATION.

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

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

Signature Aida M. Delgado-Colón Date October 28, 2005

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		55	410	Notes payable to banks-secured		--	
U.S. Government securities-add schedule[3]		--		Notes payable to banks-unsecured		--	
Listed securities-add schedule		--		Notes payable to relatives		--	
Unlisted securities--add schedule		--		Notes payable to others		--	
Accounts and notes receivable:		--		Accounts and bills due		7	294
Due from relatives and friends		--		Unpaid income tax		--	
Due from others		--		Other unpaid income and interest		--	
Doubtful		--		Real estate mortgages payable-add schedule. See Schedule C		233	226
Real estate owned-add schedule. See Schedule A		651	125	Chattel mortgages and other liens payable		--	
Real estate mortgages receivable		--		Other debts-itemize:			
Autos and other personal property.		55	000				
Cash value-life insurance - AXA Equitable 6/2/05		5	121				
Other assets itemize: See Schedule B		144	688				
				Total liabilities		240	520
				Net Worth		670	824
Total Assets		911	344	Total liabilities and net worth		911	344
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		--		Are any assets pledged? (Add schedule)	No		
On leases or contracts		--		Are you defendant in any suits or legal actions?	No		
Legal Claims		--		Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax		--					
Other special debt		--					

[3]There may be government securities among the investments made with brokerage firms such as Fidelity Investments and Wells Fargo Advantage Funds.

SCHEDULE - A
REAL ESTATE OWNED

Residential Property (Personal) Purchase price in 1998. Appraised 9/24/03	$350,000
Second Residence (Personal) Purchase price in 2001. Comprised of a house and three acres of land	260,000
Inherited Property #1 (12.5% ownership) Appraised 8/03 for $125,000.00 (12.5% = $15,625)	15,625
Inherited Property #2 (12.5% ownership) Appraised 8/03 for $204,000 (12.5% = $23,500)	25,500
TOTAL	$651,125

SCHEDULE - B
OTHER ASSETS

Itemization	
Banco Popular - CD	$21,845
Business Partnership (12.5% interest in a property with an estimated value of $100,000)	12,500
IRAs - Oriental Bank, CD IRA, Investors	16,441
IRAs - Banco Popular	47,722
Fidelity Investments, Asset Manager	1,588
Wells Fargo	19,021
Coop. Seguros de Vida. (COSVI-IRA)	25,571
TOTAL	$144,688

SCHEDULE - C
REAL ESTATE MORTGAGE PAYABLE

Residential Properties	
Doral Financial Corporation	$127,900
Citibank, N.A.	105,326
TOTAL	$233,226

III. GENERAL (PUBLIC)

1. 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.

Welcoming every available opportunity to serve the disadvantaged was something instilled by my parents since early childhood. Thus, I consider compliance with Canon 2 of the American Bar Association's Code a moral obligation for me as an individual, and as a legal professional.

As a young child, raised in a rural, agricultural town in Puerto Rico, I perceived the needs of the underprivileged to legal assistance. People of sparse economic means were compelled to pay "legal fees" to individuals simply rendering clerical services and completing forms for various federal programs. Then and there, I understood that the legal profession ought to behave differently, and throughout my career I have strived to make that difference.

After graduating from law school, I worked for two years at the Governor's Advisory Council on Labor Law. There, I gained awareness of the needs of the workforce, while analyzing and suggesting improvements to the Executive Branch in connection to areas such as the unemployment rate, training for unskilled and skilled laborers, and families on welfare.

Shortly thereafter, I joined the Federal Public Defender's Office and gained a clearer picture of the collateral effects of the issues I had studied at the Council. As an Assistant Federal Public Defender, I was assigned the legal representation of indigent defendants charged in federal court with misdemeanor and felony offenses. It was my duty and goal to ensure that the guarantees and protections of the United States Constitution be afforded to the less privileged in our society. Criminal defense is always an uphill battle that can only

be pursued with a broad concept of justice and a strong belief in the constitutional principles that are the basis of the American democratic system.

In every case I handled, to the extent practical, I tried to do more than simply confront the legal issues, instead assisting former clients, and often their relatives, with personal problems, family dilemmas, and psychological and medical needs. I also took advantage of the opportunity to assist administrative personnel at the Community Confinement Center ("Halfway House") in their very significant efforts at education and rehabilitation. To my personal satisfaction, there were many clients who rehabilitated themselves, and who kept in touch for years after the attorney-client relationship had ended. This kind of contact only reinforced my conviction that the legal profession is a wonderful tool to promote a healthier and stronger society.

In addition to providing traditional legal services to my clients, time was also devoted to identify suitable third party custodians (individuals or institutions) for illegal immigrants, mostly Cuban refugees, who entered Puerto Rico in the late 1980's. In 1987, I received a plaque from the Círculo Cubano de Puerto Rico (Cuban Society of Puerto Rico), in recognition of the humanitarian services rendered.

Upon becoming a Magistrate-Judge in 1993, I have consistently and frequently volunteered my services to different institutions, organizations, and federal programs. I should also mention that just before I began serving as a Magistrate, I performed volunteer work for a week in Kenya, Africa at one of the hospices sponsored by Mother Teresa.

Since 1993, I have sponsored conferences for Boy Scouts and Girl Scouts, as well as elementary, junior high, and high school students from private and public schools. The predominant focus of these demonstrations is to enable young people to observe hearings held in drug and carjacking cases in order to become aware of the fatal consequences of drugs and violence. I have also assisted the U.S. Pre-Trial Services Office, the U.S. Attorney's Office, the Puerto Rico District Court, and the United States Court of Appeals for the First Circuit in their Outreach Programs and Courtroom as a Classroom Programs.

Throughout the past twelve years, I have also consistently devoted time to train law students from the three major law schools in Puerto Rico, in addition to teaching at the Pontifical Catholic University of Ponce. This last endeavor is geared to provide law students from outside the San Juan metropolitan area with exposure to the federal court and federal agencies. Similarly, one of the two summer internship positions is reserved for a student from that school.

I also devote effort and time to the continuing legal education programs of the Federal Bar Association, the Federal Public Defender's Office, and the District Court's program for the Criminal Just Act Panel of Attorneys. At least once a year, I organize a program for third year law students geared toward employment opportunities, nationwide, within federal law enforcement agencies. I designed this program to ensure that future lawyers in Puerto Rico are exposed to the federal structure and organization, while expanding their professional horizons. The program has been so successful that frequently, law students, call my chambers and ask about the scheduling of this conference.

Since 2001, lately at an average of four to six times per year, I have had the opportunity to participate with the Administrative Office's Committee on International Judicial Relationships, and with the Office for Prosecutorial Development, in their judicial reform programs provided to the judiciary and to government authorities in Central and South America. I traveled with representatives of the U.S. Department of Justice, to Panamá, and Colombia. I provided training to Colombian judges as part of their transition from an accusatory to an adversary system of justice. I have actively participated in training sessions in our district for other legislators, defenders, prosecutors and judges from countries such as Perú, Guatemala, Venezuela, Nicaragua, Colombia, Mexico and Spain. Not surprisingly, but quite emphatically, participating in these programs has strengthened my belief in and commitment to our system of justice and the principles of equal protection, due process and respect for human dignity.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership

requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No. Actually, it is worth noting that since 1995 I have performed as the Dispute Resolution Officer, formerly Equal Employment Opportunity Officer for the District Court of Puerto Rico. In such capacity, I assist the Court and its dependencies to ensure a workplace free of non-discriminatory practices.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No. There is no Selection Commission.

In January, 2005 anticipating that a vacancy for a District Judge position was to arise as of June, 2005, I was recommended to and did provide a copy of my Curriculum Vitae for review by the Honorable Luis Fortuño, Resident Commissioner (Congressman for the Commonwealth of Puerto Rico). Subsequently, I was contacted by personnel at the White House and scheduled for an interview which took place on May 12, 2005. On that same date I met once again for an interview with our Resident Commissioner. I was interviewed by Associate Counsels to the White House, and a representative for the U.S. Department of Justice. Thereafter, on June 9, 2005, I was informed that my name would be submitted as that of a candidate for the District Judge vacancy that arose on the District of Puerto Rico as of June 10, 2005. After a background investigation I was formally nominated by the President of the United States on October 25, 2005.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My philosophy regarding thè necessity for judicial restraint was forged long before I actually had the opportunity of testing and abiding by those principles as a Magistrate-Judge.

In law school, I was exposed to the philosophical and doctrinal bases for the separation of powers, and the constitutional and statutory principles that govern our judicial system. I also learned about the limited jurisdiction conferred upon federal courts through principles of standing, ripeness, and justiciability, Later, as an advocate, those substantive principles

emerged as active and dynamic components of an attorney's daily professional life. I came to realize the importance of mastering the applicable law and constitutional principles in order to delineate a sound trial strategy, and to compile as compelling a case as possible, relentlessly marshaling the facts and arguing their applicability to existing law. My duty as an advocate was to either seek resolution of the controversies through settlement, or to provide the court with the necessary elements of judgment to find in my client's favor under applicable law and precedent. During that process, every practitioner's expectations are centered on facing an unbiased court that will remain committed to constitutional and statutory principles, holding each party to its true burden without ever overreaching its authority.

During the past twelve years as a Magistrate-Judge, I have abided by the principle of judicial restraint, substantively and procedurally, while in court, and while rendering my decisions. On occasion, counsel has attempted to argue that I should exceed my jurisdictional authority or to tempt me to exercise power that has not been conferred. Giving in to either scenario would only have been detrimental to the role of the judiciary.

As a Magistrate-Judge, I not only operate in the federal court system, itself a product of very limited jurisdiction, but also as an official with statutorily vested responsibilities. Magistrate-Judges are bound to apply the same legal and procedural principles of judicial restraint to which District Judges are to adhere: to apply constitutional or statutory principles, one must examine the statutory language; if further guidance is necessary, one turns to Congressional intent, and, if needed, case law or precedent. Following these principles ensures judicial effectiveness and efficiency. A Magistrate-Judge that does otherwise, poorly serves the community and the Court.

During the past twelve years, I have presided over a variety of legal matters with different levels of complexity. I have always approached each task firmly determined to act within the scope of my authority, and within the scope of the referral made. I have identified the issues presented, the parties that are rightfully entitled to any remedy, and have adjudicated the controversies at hand in light of factual realities and constitutional and statutory mandates. While conscious of the principle of judicial independence I remain fully cognizant it is not to be equated to judicial supremacy.

Consequently, I remain cognizant that it is Congress' prerogative to enact the law, the Executive's duty to ensure compliance, and the Judiciary's obligation not to rewrite or modify it. The principle of judicial independence mandates that judges be impartial umpires of the law, committed to resist any and all temptation to subscribe to a particular way of thinking or a particular or personal, social, political or ideological agenda or interest.

In sum, the notion of judicial restraint is not an abstract concept for me to become acquainted with: it is a philosophy that I have honed over the past twelve years. The American system of government operates and finds balance within a simple equation – the people elect those that are to represent them in defining economic, political and social policies concerning complex issues. These same people then turn to a system of justice and judges who, within an unbiased framework, will afford them due process, an equal opportunity to present their grievance, and fair resolution of such grievances in accordance with the law. Strict adherence to these principles, undoubtedly constitutes the mechanism for a stable, reliable and trustworthy system of justice.

AFFIDAVIT

I, Aida M. Delgado-Colón, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 7, 2005
NOVEMBER 7, 2005

AIDA M. DELGADO-COLON

MARIA ANTONGIORGI JORDAN
ABOGADA-NOTARIA

(NOTARY)

Senator CORNYN. Well, thank you very much.

Recently—I guess it was just about 7 months ago—Sandra Day O'Connor announced her retirement from the United States Supreme Court, and during that interim of 7 months we have had confirmation hearings and the confirmation of the Chief Justice of the United States and of Justice Sam Alito. This hearing will not be anything like theirs.

[Laughter.]

Senator CORNYN. That is the good news. I might just point out before I pose questions to the nominees that none of you are strangers to the Committee in this sense, that before you got here not only has a thorough investigation been made into your background and your professional qualifications, your integrity and your judicial temperament at the White House before you were nominated, but I am confident that an evaluation was made by the Senators and those who were responsible for your getting the nomination.

In addition, we know that the Federal Bureau of Investigation does a thorough background investigation into each nominee, which is appropriate. And the American Bar Association, as was already mentioned, Standing Committee on the Judiciary does a thorough evaluation of judicial nominees and makes a recommendation to the Committee.

So that is what I mean when I say none of you are strangers to the Committee. Even though we have just met face to face, the Committee already knows an awful lot about you, and that is as it should be. But I do have just a few questions and it won't be lengthy interrogation, but I would like to hear from each of you with regard to a couple of things.

Mr. Gordon is going to have a chance to educate me a little more on the particular court that he has been nominated to. I am much more familiar with the functions of the courts the rest of you have been nominated to.

Mr. Batten, could you share with me and the Committee some of your insights into the challenges of administering a docket on the court to which you have been nominated? Obviously, judicial philosophy was the focal point for a lot of discussions for the Supreme Court nominees because they are the last word, and certainly as a district court judge your responsibility will be to follow the law as determined by the United States Supreme Court, but perhaps directly in most cases by the circuit in which your court is located.

Could you share with the Committee some of your thoughts about the nature of the docket you have—I am unfamiliar with it—and the challenges you will have in terms of administration and how you will approach that job?

Mr. BATTEN. Yes, sir. Thank you, Mr. Chairman. The smooth administration of justice, of course, is critical if there is to be justice, and in the District Court of the Northern District of Georgia, which is Atlanta, approximately 15 percent of the cases that are tried are criminal in nature. And I know as a trial lawyer—I have been trying cases for 22 years—that it is imperative that the courts move quickly. As has been so frequently quoted, justice delayed is justice denied.

It is my intention to act as expeditiously as possible with my cases. I have an expectation upon entering the court to see to it that there is a commitment to excellence among everyone on my staff, and especially myself where I would make decisions. I think it is crucial that a judge not lose sight of the fact that the public perception is that the cases languish too long. And then even when the lawyers start feeling that perception, then there is probably some truth to it.

So my objective, Senator, would be to move my cases as rapidly as possible, to use alternate dispute resolution mechanisms such as mediation and arbitration to achieve as high a settlement rate as practicable, and to move my cases as quickly as possible.

Senator CORNYN. Mr. Johnston, could you tell me a little bit about the nature of the docket of the court to which you have been nominated and your thoughts as to how you will make sure that all litigants get a timely and fair opportunity to be heard?

Mr. JOHNSTON. Yes, Mr. Chairman. I appreciate the opportunity to share some thoughts on those issues. The docket in the Southern District of West Virginia in many ways is very similar to the Northern District of West Virginia, where I now serve as United States Attorney and where I previously served as a law clerk to Hon. Frederick P. Stamp, Jr., who is a United States District Court Judge in Wheeling, West Virginia.

I believe that in many ways I will borrow practices from Judge Stamp and his ability to move cases expeditiously, to decide cases fairly based on the law, to set cases for trial. In my experience from working with Judge Stamp, and certainly also being in private practice and also in the U.S. Attorney's offices, that there is nothing that moves a case toward resolution like a trial date.

Also, the Northern District has been something of a pioneer in alternate dispute resolution. I am a big believer in that as a means to find resolution for cases more quickly, more expeditiously and more efficiently for the litigants involved.

If I may, Mr. Chairman, I think that I would like to add to my introductory remarks, if I may. I do want to thank Senator Rockefeller and Congresswoman Capito for their very kind remarks today, and I also want to thank my family for their love and support and for them being here. I think I would be remiss in not making those remarks.

Thank you very much.

Senator CORNYN. Thank you. That is most appropriate.

Mr. Gordon, tell me a little bit about the court to which you have been nominated. You have had quite a bit of experience, it sounds like, working in and around it, but tell me a little bit about the challenges that that court has in terms of administering its docket and making sure that justice is not delayed or denied.

Mr. GORDON. Yes, Mr. Chairman. Thank you very much for the question and the opportunity to share with you some of my thoughts. As you may be aware, Mr. Chairman, the court only has civil jurisdiction and the court is responsible for hearing challenges to the administration and enforcement and interpretation of the Federal customs and international trade laws of the United States. As such, the United States Government is either the defendant or

the plaintiff in almost every single case that comes before the court.

In those situations, we are dealing principally with challenges to decisions made by the Bureau of Customs and Border Protection with respect to the importation of merchandise into the United States and decisions made by the Department of Commerce and the International Trade Commission with respect to the anti-dumping and countervailing duty laws of the United States.

For the past 25 years, I have had the opportunity to work with judges on the court, the staff at the court and many, many attorneys, both in the private sector and the Government sector, with respect to that very issue that you raised, which is the administration of justice and the management of the court's docket.

I am very proud to say that as clerk of the court, we have gone completely electronic, utilizing the Administrative Office's CMECF system, and so all of the cases that are on the docket before the court are now electronically filed, with the exception of certain initiating documents.

I have had the opportunity to work with the court's Advisory Committee on Rules and with many attorneys in mega cases that are before the court in constructing efficient practices and procedures in order to make sure that the cases move through the system effectively, with fairness and an opportunity for all sides to present their arguments and issues to the court.

I fully expect that the experience that I have had as the assistant clerk as the court and now as the clerk as the court, and my relationship with many counsel—that I will be able to continue those practices, if confirmed by the Senate as a judge. And I fully expect to be able to dispose of the docket before me in an efficient and effective manner, clearly with the goal of dispensing justice and doing it in a way that makes sure that there is an opportunity for each side to be heard.

I absolutely believe that one of the most critical skill sets that a judge can have is the ability to listen and to make the litigants that appear before the court, along with their counsel, to be comfortable and to know that they have had their opportunity for a day in court, and that they can walk out the door feeling that the process has heard them and served them well, regardless of the outcome.

Senator CORNYN. Well, I appreciate your comments with regard to the belief of the litigants that they have had a fair opportunity to be heard, win, lose or draw. Back in a previous lifetime, I served as a State trial court judge and then served on my State's supreme court.

I was amazed at how many times people really just wanted somebody to listen to what they had to say, and it is, I guess, maybe a sign of the times that people don't get other people to listen to them unless they get them into court, where they have to listen. That was an amazing sort of revelation. I guess it is nothing profound, but there is a great sense of justice with giving people an opportunity to be heard.

I know judges frequently feel like they are under pressure to move their docket, accelerate their production, but I appreciate your comments with regard to having people with the belief that

they have experienced justice and not just been part of a cog in a huge machine.

Judge Delgado, I would be interested in learning more about the court to which you have been nominated and your plans for administering your docket.

Judge DELGADO-COLON. Well, the District Court of Puerto Rico for which I have been nominated is the same court for which I have been serving as a magistrate judge for the past 12 years.

Of course, a trial court is a court of limited jurisdiction. We have a full and very active civil docket and criminal docket. Actually, within the First Circuit I think we rank and have ranked No. 1 in multi-defendant criminal cases. So that is a great challenge in terms of the pre-trial management and the skills that are compelled and the follow-up that the judge has to give to those types of cases.

So it is a very active docket that thus far I understand is well under control. And I hope that I will be able, if confirmed by the Senate, to keep assisting the district judges of that court to dispense justice equally to all in a prompt and expedited and fair manner.

In terms of the skills or mechanisms that I can utilize or can be utilized to expedite case management, certainly, sir, I will have to mention that the local rules of the district court provide for a very streamlined discovery process and motion practice that, when effectively implemented, serves very well the purpose.

Besides that, I am a firm believer in the same trend of listening to the attorneys; that instead of imposing a scheduling order, what I do more so in complex cases is that I meet with the attorneys. I sit with them and I try to fix a reasonable schedule that is worked jointly. After that, the attorneys know that they will have to live to that schedule, and enforcing that schedule is something that prompts resolution.

I think that a firm trial date always serves to expedite cases and matters, and it has been my experience and the result of my experience during the past 12 years that alternative dispute resolution is an incredible mechanism that is available and has been implemented in the district court successfully.

Personally, I am a firm believer of communicating with the attorneys, members of the bar, either through the ABA, the Federal Bar, keeping in touch with members of the bar through continuing legal education, which is what we have done. And we share the needs of the court, the concerns of the attorneys, and we keep on a daily basis—or a frequent basis, I should say, trying to work out mechanisms that will expedite the cases in court and serving everyone fairly and expeditiously.

Senator CORNYN. Well, thank you very much. You mentioned alternative dispute resolution, as did Mr. Johnston and Mr. Batten. One of the concerns I have about our civil justice system—and now we are talking about civil cases, obviously—is the time, the delay, and the expense of invoking the provisions of our law when it comes to having your case heard and decided in a court.

If you are the plaintiff, obviously a contingent fee arrangement is the way that oftentimes that obstacle is overcome. But, you have to find a lawyer who will take your case and they have to obviously

feel like it is a good economic decision for them to make or you may be out of luck, or you can be a wealthy litigant or have insurance.

But, I worry that for many people who have disputes that they would like to present to courts for decision, the courthouse doors are locked, not literally, but because of the cost and the delays inherent in so much of our civil justice system.

Mr. Batten, can you talk to that issue and maybe a little bit about your experience with alternative dispute resolution and how you would plan to implement those procedures perhaps to address those issues of cost and delay?

Mr. BATTEN. Yes. Thank you, Mr. Chairman. I started practicing law in 1984 and it really was about that time, in the mid- to late 1980's, that ADR became more pervasive, more popular. Frankly, when I first introduced to it, I wasn't very excited about it because I wanted to try cases. And then I started mediating cases, more mediation than arbitration, which in the Northern District of Georgia that is more commonly used. And what I learned is this works.

It is a rare case today where I am that the parties are not ordered to mediation. You know, I have had cases that I went in thinking there is absolutely no way that this case will settle; these people are too adamantly entrenched in their respective polar opposite positions to be able to reconcile through one mediator in 1 day. And I have had a number of occasions when I went in feeling that way and the case was resolved by mediation. So in my book, there is no such case, a case that can't be resolved by mediation.

So I think one of the important things is the parties typically should be ordered to mediation because it is so effective, and although lawyers are much more receptive to the idea now than I was in the early or mid-1980's, there are still some lawyers today who don't embrace ADR as a regular part of the procedural machinery that should be employed to resolve cases. That is where I think help can be had.

Senator CORNYN. Mr. Johnston, let me ask you a related but slightly different question. What do you think the role of the judge is with regard to alternative dispute resolution? Is that a function that is delegated to someone else or should the judge be in the middle of shuttling back and forth between the litigants trying to get the case settled? And, does that raise any issues, in your mind, about the judge's later role, that of being the impartial adjudicator?

Mr. JOHNSTON. Thank you for that question, Mr. Chairman. My experience is that a judge is in a position to encourage alternate dispute resolution. My experience—as I mentioned earlier, in the Northern District of West Virginia we have a program called the settlement week mediation, and each judge is asked to look at their docket and look at cases that are close to the end of discovery coming up for trial and put them on a list.

And then we have all of the cases and mediators—we have a large number of trained mediators who will come in and we will assign rooms to them throughout the courthouse and mediate all together over a week-long period. The rate of resolution of those cases typically was around a third of those cases would be resolved as a result of that, which I thought was a remarkable result and a great bit of evidence for the efficacy of alternative dispute resolution.

So I think to the extent that as a judge, if confirmed, I can encourage mediation, I will do that. I think it is appropriate for a judge to participate in settlement conferences as long as one does not step into the role of advocate. Certainly, facilitating settlement discussions is an appropriate and useful, in my opinion, function for a judge if it assists in resolving a case.

Senator CORNYN. Mr. Gordon, does your court employ alternative dispute resolution?

Mr. Gordon, Mr. Chairman, no, the court does not. We are not authorized by statute for an ADR program. However, the court does have what we call an in-court mediation program where one judge can refer a case for settlement discussions to another judge. We have had that for a couple of—the judges have had that for a couple of years. The program has had modest success.

The thing that you need to know about our docket is that many of our cases are related to another case or have implications for other cases, so that the use of mediation is somewhat problematic because of the nature of the court's jurisdiction.

Senator CORNYN. It doesn't just affect the immediate litigants or parties to the case?

Mr. GORDON. That is absolutely correct, Mr. Chairman.

Senator CORNYN. Judge Delgado, you said your court tries a lot of complicated, multi-party criminal cases. What percentage of the cases are civil?

Judge DELGADO-COLON. Right now, I will say—well, I think that there is a balanced number, but the number of defendants in one criminal case certainly is quite significant. We may have one criminal case with 40 defendants, 36 defendants. That is not unusual in our district. Twelve is run-of-the-mill, if I may use the expression. But in that sense, my share of work—right now, I will say it is 50 percent civil, 50 percent criminal as a magistrate judge.

Senator CORNYN. And how do you employ alternative dispute resolution or settlement techniques to try to resolve cases without trial? Could you comment on that, please?

Judge DELGADO-COLON. The alternative of mediation is always offered to the parties, and some of them, some of the attorneys of the bar, are familiarized with the process and they even request at their own initiative to have the case mediated by a judicial officer. In the sense that it may create a conflict or a dilemma for the judge that is presiding or would be presiding in the trial of the case, we have used—or the district judges have used magistrate judges to assist in that matter and we mediate many, many cases.

On some occasions, if the case requires a lengthy process or it involves the need for an expert in certain topics or areas or legal fields, there is a panel of mediators to which the court can have the case assigned, or have some other magistrate judge from other districts within the First Circuit to conduct the mediation as well. But it is a mechanism that is always offered. It has been well accepted by members of the bar and frequently used in our district.

Senator CORNYN. Thank you very much.

Well, I thank each one of you for appearing here today and bringing your family and friends along with you. Congratulations on your nomination. It is my hope that now that the hearing is almost concluded that we can have a quick mark-up of your nomina-

tions in the Judiciary Committee and hopefully get them to the floor of the Senate without any unnecessary delay.

At this point, I would like to offer, without objection, the statement of Senator Johnny Isakson on the nomination of Timothy Batten, as well as a letter from the Customs and International Trade Bar Association on behalf of the nomination of Mr. Leo Gordon. That will also be made part of the record, without objection.

We will leave the record open until 5 p.m. on Tuesday, February 14, in case any member of the Committee would like to submit written questions to the nominees. In the event that that occurs and you receive written questions, I would encourage you to get those answered and back to the Committee as soon as you can. Obviously, that will help us expedite the voting of your nominations out of the Committee and to the floor. And, I know you have an interest in making sure that there is not unnecessary delay, as I do.

Thank you very much for being here. Good luck to each one of you.

With that, the hearing is adjourned.

[Whereupon, at 4:46 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of the Honorable Saxby Chambliss
United States Senator
Concerning the Nomination of
Timothy C. Batten
to be Judge on United States District Court
for the Northern District of Georgia

February 7, 2006

Mr. Chairman and members of the Committee on the Judiciary. I am pleased to introduce, Timothy C. Batten, the President's nominee to be United States District Court Judge for the Northern District of Georgia. As a former member of the Judiciary Committee, I am acutely aware of the importance of these hearings in the consideration of nominees for the federal courts and I look forward to the Committee's expeditious review of this outstanding nominee.

Mr. Batten was nominated by President Bush on September 29, 2005 after Senator Isakson and I conveyed Mr. Batten's name for appropriate consideration. Mr. Batten is a native Georgia and resident of Atlanta. He graduated with honors from Georgia Institute of Technology and *cum laude* from the University of Georgia School of Law. Since his graduation from law School he has been with the Atlanta law firm of Schreeder, Wheeler & Flint, becoming a full equity partner in 1993. He has specialized in commercial litigation, representing both plaintiffs and defendants and has substantial trial experience. Tim Batten has distinguished himself among Atlanta lawyers and is held in high regard by judges before whom he has appeared as well his colleagues at the bar, including opposing counsel.

Tim Batten is a devoted husband and father and brings to the federal bench, not only a wealth of legal experience, but a dedication and commitment to the rule of law which is an essential qualification for any person who would serve in the federal judiciary.

I urge my former colleagues on this committee to support his nomination and move it expeditiously to the Senate floor so that the people of the Northern District of Georgia may receive the services which Tim Batten will bring to that distinguished federal bench.

Customs and International Trade Bar Association

Melvin S. Schwechter, Esq.
President

Sandra Liss Friedman, Esq.
Vice-President

Patrick C. Reed, Esq.
Secretary

M. Page Hall, II, Esq.
Treasurer

Michael S. O'Rourke, Esq.
Chair, Continuing Legal Education and Professional Responsibilities Committee

Richard M. Belanger, Esq.
Chair, Customs and Tariffs Committee

Claire R. Kelly, Esq.
Chair, Judicial Selection Committee

John Magnus, Esq.
Chair, Liaison with Other Bar Associations Committee

Beth C. Ring, Esq.
Chair, Meetings and Special Events Committee

Joel Simon, Esq.
Chair, Membership Committee

Teresa M. Polino, Esq.
Chair, Publications Committee

Steven P. Florsheim, Esq.
Chair, Technology Committee

John M. Peterson, Esq.
Chair, Trial and Appellate Practice Committee

James R. Cannon, Jr., Esq.
Chair, International Trade Committee

William D. Outman, II, Esq.
Past President

January 9, 2006

Senator Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Leo M. Gordon to United States Court of International Trade

Dear Chairman Specter:

The Customs and International Trade Bar Association (CITBA) herewith submits its views concerning the fitness of Mr. Leo M. Gordon to serve as a Judge on the U.S. Court of International Trade (CIT). For the reasons set forth below, CITBA strongly endorses the nomination of Mr. Gordon to the CIT.

CITBA was founded in 1926. Its members consist of over 400 attorneys who concentrate in the field of customs law, international trade law and related matters. CITBA members represent United States importers, exporters and domestic parties concerned with matters that involve the United States customs laws, antidumping, countervailing duties and other international trade laws, and related laws and regulations of federal agencies concerned with international commerce. Active, regular membership in CITBA requires membership in the bar of the CIT.

Summary of CITBA Views

In order to assess the fitness of Mr. Gordon for a position, CITBA reviewed Mr. Gordon's published writings, solicited the opinions of CITBA members familiar with Mr. Gordon and his many years of service to the court, and interviewed Mr. Gordon. Mr. Gordon is well-qualified to serve on the CIT, in terms of temperament, integrity and experience in the relevant laws, procedures, and standards of review applied by the court to matters before it.

Consideration of Fitness

As a matter both of principle and practice, CITBA strongly believes that it is appropriate and desirable to appoint judges to the CIT who possess a depth of experience in the relevant field of law.

The CIT has jurisdiction over diverse matters involving import transactions. Since 1890, the Board of General Appraisers, which became the Customs Court, and later the CIT, has been responsible for reviewing the rate and amount of duty imposed on imported merchandise, as well as the classification and value of such merchandise. In 1980, the CIT was created to clarify and expand the jurisdiction of the Customs Court. "The Court of International Trade was created by Congress in the Customs Courts Act of 1980 as a nationwide forum to review and resolve disputes involving the importation of goods and the payment of customs duties."[1]

Among other things, the 1980 Act clarified that the CIT had jurisdiction to review antidumping and countervailing duty determinations by the Department of Commerce and the International Trade Commission, in addition to its traditional jurisdiction over Customs classification, valuation and related matters. Importantly, Congress bestowed on the CIT residual jurisdiction to decide any civil action against the United States arising out of any law pertaining to international trade. The House Report articulated the purpose of the 1980 Act to create

> a comprehensive system of judicial review of civil actions arising from import transactions, utilizing the specialized expertise of the United States Customs Court [now Court of International Trade] and the United States Court of Customs and Patent Appeals [now Federal Circuit].[2]

Congress' intent to provide for judicial review by a national court with "specialized expertise" is best served by appointing true experts to the CIT. The subject matter before the court is complex, technical, and always changing.

As noted above, the United States has used a specialized tribunal to adjudicate customs law disputes since 1890. Administration of the law involves numerous legal issues arising from import transactions. The CIT must interpret the classification of imported articles under the Harmonized Tariff Schedule of the United States (HTSUS). The court must also interpret and

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[1] H.R. Rep. No. 99-390 at 2, *reprinted in* 1985 USCCAN 2453-54.

[2] H.R. Rep. No. 96-1235 at 20, *reprinted in*, 1980 USCCAN 3729, 3731.

apply the laws concerning the valuation of imported merchandise, drawback, antidumping and countervailing duty laws as well as a host of other trade and customs laws.

The international trade laws also have a long history. The first general law imposing countervailing duties on subsidized imports was enacted in 1897. In 1921, the United States enacted the Antidumping Act. Over the years, the 1921 Act was regularly updated and amended, until being replaced by the current antidumping statute enacted in 1979. The 1979 Act, as amended in 1984, 1988, 1992 and 1994, is the law today. The Act itself implements the U.S. obligations found in the World Trade Organization's Anti-dumping Agreement, and the Subsidies and Countervailing Measures Agreement.

The work of the court in these areas consists of reviewing agency determinations—made by the Bureau of Customs and Border Protection ("Customs"), the Commerce Department or the U.S. International Trade Commission—under various and different standards of review. The CIT, however, does not function entirely in the manner of an appellate court. Various questions of customs classification and penalty decisions are entitled to *de novo* review by the CIT.[3] Questions of fact, such as the actual use or application of an imported article, must be established on the basis of positive evidence before a judge of the CIT. These issues typically involve presentation of expert and other testimony and documentary and physical evidence.

Legal issues in customs cases, where the facts are not in dispute, are typically decided on motions for summary judgment.[4] But, unlike the standard of review applied by appellate courts under the Administrative Procedures Act, the CIT often does not apply *Chevron*[5] deference. The Supreme Court, in *United States v. Mead Corp.*,[6] held that a Customs tariff classification ruling is not entitled to judicial deference under *Chevron*.[7] Rather, a Customs classification ruling is entitled to a degree of deference that is "proportional to its 'power to persuade.'"[8] Application of such a standard presumes an expert judiciary, fully capable of interpreting and applying the

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[3] Customs' classification decisions are subject to *de novo* review pursuant to 28 U.S.C. § 2640 (1994). Penalty cases are reviewed *de novo* pursuant to 19 U.S.C. § 1592(e).

[4] *See, e.g., E.M. Chem. v. United States*, 920 F.2d 910, 912 (Fed. Cir. 1990).

[5] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)

[6] 533 U.S. 218, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001).

[7] 533 U.S. at 227.

[8] Mead Corp. v. United States, 283 F.3d 1342, 1345 (Fed. Cir. 2002), (*quoting Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944)).

HTSUS as intended by Congress, and not simply ascertaining whether Customs' interpretation was "reasonable."

Questions presented by appeals from antidumping and countervailing duty cases are governed by a standard of review that is quite similar to the Administrative Procedures Act standards.[9] The matters before the court, though, will typically involve a voluminous evidentiary record including accounting documents, statistical evidence, economic analyses, as well as testimony by witnesses and economic or other experts.

In order to provide relief in matters covered by its broad subject matter jurisdiction, the CIT has complete powers in law and equity. That is, the court is an Article III court of the United States. The court may grant any relief appropriate to the particular case before it, including, but not limited to, money judgments, writs of mandamus, and preliminary or permanent injunctions.

Moreover, the geographical jurisdiction of the CIT is nationwide. The court decides cases that arise anywhere in the country, and judges may sit in the courthouse in New York or in a federal courthouse in the locality in which the dispute arose. The court also is authorized to hold hearings in foreign countries.

U.S. imports subject to Customs' jurisdiction and, potentially, jurisdiction of the CIT amounted to $1.4 trillion in 2004.[10] The CIT confronts disputes that are national, economically and politically substantial, technical, and subject to complicated and differing standards of review involving diverse categories of imports including but not limited to oil, steel, semiconductors, textiles and lumber.

Given the importance, uniqueness and diversity of the CIT's role, CITBA believes that the most outstanding feature of Mr. Gordon's qualifications is his unique history and experience with the CIT and the customs and international trade laws it administers. Given the specialized nature of these laws and the diverse standards of review applied by the CIT, Mr. Gordon's background would serve him well on the court.

Mr. Gordon has obtained a thorough understanding of the subject matter, administrative procedures and vocabulary employed in the fields of customs and international trade law. His resume indicates that he was:

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[9] Pursuant to 19 U.S.C. § 1516a(b)(1), the CIT reviews certain agency determinations under the "arbitrary, capricious" standard and other determinations under the "substantial evidence" standard.

[10] See http://www.census.gov/foreign-trade/PressRelease/current_press_release/exh5s.pdf

- Assistant Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, U.S. House of Representatives (September 1977 through January 1981)

- Assistant Clerk, U.S. Court of International Trade (January 1981 to July 1999)

- Clerk of the Court, U.S. Court of International Trade (July 1999 to present)

This long record of experience with the customs and international trade laws and his involvement in creation of the CIT and its rules and procedures have provided Mr. Gordon with a unique history of experience and expertise. In his tenure as Assistant Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, he served as lead counsel in drafting the Customs Courts Act of 1980, which established the CIT.

Perhaps even more important have been his roles as the Assistant Clerk and Clerk of the Court at the CIT. The specialized fields of customs and international trade law as well as the history of the CIT itself have led to a unique role for its Clerk of the Court. The Clerk of the Court at the CIT is not just an administrative position. The Clerk of the Court represents the court and acts as an in-house counsel, chief operating officer, a legal liaison, and a legal reference.

In these capacities Mr. Gordon has gained unparalleled exposure to customs and international trade laws, the court's standards of review and the procedural requirements of the court. He is not a typical clerk of the court. Rather, acting as the court's in-house counsel, he has been in a position to view and participate in litigation in a manner in which he sees the customs and trade law litigation in a larger context than the typical private or government advocate. He has also been exposed to a broader range and greater number of customs and international trade law cases than any private or government attorney.

In his positions as Assistant Clerk and subsequently Clerk of the Court, he has also garnered tremendous experience in other capacities. He has acted as the court's chief operating officer, gathering a thorough understanding of the court's working and procedures. He has served as legal liaison with the customs and international trade bar, often at the forefront in organizing CLE programs focusing on the work of the court and substantive customs and international trade laws in order to raise the quality of practice before the CIT. He has won the widespread respect of the members of the bar as a person of the greatest integrity, professionalism, and intelligence. Comments from members of the customs and international trade bar concerning his fitness to serve as a member of the judiciary at the CIT have been overwhelmingly positive and enthusiastic.

At the CIT, Mr. Gordon has also served as a legal reference, a person with an in-depth understanding of the court's jurisdiction, the administrative processes that precede court actions, the court's standards of review and a host of other subjects in the field of customs and international trade law, including but not limited to, classification and appraisement, the HTSUS,

and countervailing and antidumping duty orders. Not surprisingly he has been entrusted with responsibility to develop special procedures for handling complex, multi-party, multi-case litigation that requires understanding these issues. It would be difficult to imagine another person with the range and depth of experience of Mr. Gordon's.

Finally, Mr. Gordon's temperament is ideal. He is fair and focused and he has dedicated his life not just to this field of law, but to the fair administration of justice in this field. He is admired among members of the bar as someone who listens attentively, explains thoroughly and is generous with his time. His understanding of the substance and procedures of the court is surpassed only by his respect for the work it does and those with whom he works.

Comments Regarding Scope and Methodology

In considering Mr. Gordon's fitness to assume a position on the bench, and in keeping with CITBA's mission as an association of customs and international trade practitioners, CITBA focused on the prior experience, public records, and peer review of Mr. Gordon. CITBA did not conduct a detailed review of Mr. Gordon's personal background, finances, or political affiliations.

Conclusion

On behalf of the Customs and International Trade Bar Association, we respectfully submit these views on the fitness of Mr. Leo M. Gordon for the position of Judge of the U.S. Court of International Trade. We also wish to thank the Committee for its consideration of our views in a matter of great interest and importance to the lawyers practicing before the CIT. For the reasons given above, CITBA strongly supports the nomination of Leo M. Gordon to the U.S. Court of International Trade.

Respectfully submitted,

Melvin S. Schwechter
President, CITBA

Claire R. Kelly
Chair, Judicial Selection Committee

Cc: Hon. Leo M. Gordon
CITBA Board of Directors

JOHNNY ISAKSON
UNITED STATES SENATOR · GEORGIA

Introductory Statement by Senator Johnny Isakson (R-GA) on the Nomination of Timothy Batten to be United States District Judge for the Northern District of Georgia

February 7. 2006

Mr. Chairman:

I apologize that I cannot be present to introduce Timothy Batten in person, but I am attending the funeral of Coretta Scott King today in Atlanta. I do appreciate the opportunity to submit for the record remarks in introduction of Mr. Batten, the President's nominee to serve as the United States District Judge for the Northern District of Georgia.

Mr. Batten was born in Atlanta, Georgia, received his undergraduate degree at the Georgia Institute of Technology in 1981, and his juris doctorate degree at the University of Georgia in 1984. He has practiced law in Georgia his entire professional career at the firm of Schreeder, Wheeler & Flint, and he and his wife Elizabeth have 6 children.

I know Mr. Batten is very well qualified and keenly aware of the responsibilities he is about to undertake. I ask that the Committee fairly consider his nomination as the members will learn that he will be a jurist who understands the value and the strength and the power of the constitution of the United States of America, and a jurist who will rule based on the law, not legislate based on the position. The primary focus of this hearing should be Mr. Batten and his exceptional qualifications, and whether the Senate is faithful to its duty to "advise and consent". I have every confidence that the Committee will find that Mr. Batten is equal to the position he has been nominated for.

I thank you, Mr. Chairman, and all members of the Committee for your courtesy in allowing me to introduce Timothy Batten of Atlanta, Georgia.

SENATOR FRANK R. LAUTENBERG
INTRODUCTION OF LEO M. GORDON
SENATE JUDICIARY COMMITTEE
February 7, 2006

Thank you for giving me the opportunity to introduce Leo Gordon, a native New Jerseyan who has been nominated for a lifetime appointment to the United States Court of International Trade.

Mr. Chairman, I used to serve on the Port Authority of New York and New Jersey, and I don't believe it's possible to overstate the importance of international trade in today's global economy.

The Court of International Trade has jurisdiction over cases involving international trade and customs disputes. Therefore, our economy depends on having good judges on the court.

The American Bar Association has rated Mr. Gordon as "well qualified" for this position.

Since he graduated from the University of North Carolina and Emory Law School, Mr. Gordon has spent his entire career in public service.

Mr. Chairman, recent years have shown us the necessity of ensuring that nominees have a specific knowledge and experience in the capacity in which they will be asked to lead. There is little question that Mr. Gordon has a strong familiarity of this court.

For the last 25 years he has served as the Assistant Clerk or Clerk of the Court of International Trade. In that position he essentially serves as chief legal advisor to the judges of the court. He also wrote a textbook and a handbook on litigating before the court.

In fact, as an aide to the House Judiciary Committee in 1980, Mr. Gordon actually helped write the law that created the US Court of International Trade. Few if any Americans know the court better.

Mr. Gordon's qualifications go beyond his legal credentials.

He has been active in his community, serving on the South Orange-Maplewood school board for six years, as well as on the local planning board.

I am honored to present Mr. Gordon to the Committee for your consideration. I know each member will take seriously the duty to examine Mr. Gordon's record, and I trust that he will be forthcoming in providing any information requested.

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U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy
Ranking Member, Judiciary Committee
Hearing on Judicial Nominations
February 7, 2006

Today the Committee will consider three nominations for lifetime positions on United States District Courts, and one nomination to be a judge on the Court of International Trade, also a lifetime appointment to an Article III court.

It is in the District Courts, our nation's federal trial courts, where the people, crime victims, criminal defendants, and civil litigants, come into contact with our federal system of justice. It is also the place where they encounter the human face of our system, our federal judges. All federal cases start as cases and controversies involving real people with real problems before the trial courts. Some are appealed to the circuit courts and a few, a very few each year, are reviewed by the Supreme Court.

The four people before us today come with fine reputations and records and are supported by their home-state Senators, both Democrats and Republicans. They have a variety of experiences – two serving in different capacities in the courts they hope to join as lifetime appointees, one who has spent his career in private practice, and the other who comes with prosecutorial experience as a United States Attorney.

If these nominees are confirmed, it will mean that President Bush will have seen 226 judges confirmed, in addition to two Supreme Court justices. This is an indication of what we can achieve when we work together on consensus nominees chosen to serve justice rather than partisan political ends. I would encourage the President to remember that when he makes all of his selections to the bench. Unfortunately, sometimes this President chooses to send nominees who are selected on ideological grounds and to achieve partisan ends, intending to move the courts far to the right. I have opposed such nominees.

At this time in our history when the importance of judicial review of executive and legislative decisions is so important, our duty to advise and consent to lifetime judicial appointees could not be more vital. I look forward to the testimony of these nominees and to reviewing their records further. I welcome them, their friends and family to this hearing today.

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NOMINATIONS OF STEPHEN G. LARSON, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; JACK ZOUHARY, OF OHIO, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO; AND JOHN F. CLARK, OF VIRGINIA, NOMINEE TO BE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE

WEDNESDAY, FEBRUARY 15, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Mike DeWine presiding.

Present: Senators DeWine and Feinstein.

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Good morning. We welcome all of you to the hearing. The Committee will come to order.

Today we will have a confirmation hearing for two of the President's judicial nominees as well as the nominee for head of the United States Marshals Service. I think all of these nominees are well-qualified for their respective positions and I hope we can move these nominations through the Committee shortly and through the Senate as soon as possible.

Let me welcome Senator Warner and Senator Allen with us today. Let me also welcome Senator Feinstein, and I would defer to her now for her comments.

Senator FEINSTEIN. Thank you very much.

I would like to introduce to the Committee Judge Larson. I don't know if it is appropriate to do it now.

Senator DEWINE. We can do that. Are you going to stay with us during the—

Senator FEINSTEIN. I was hoping not to stay the whole hearing, if I might.

Senator DEWINE. Why don't you go right ahead, then.

Senator FEINSTEIN. Thank you.

PRESENTATION OF STEPHEN G. LARSON, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Mr. Chairman, Senator DeWine, it is my pleasure to introduce to the Committee Judge Stephen Larson, the nominee to the Federal District Court for the Central District of California.

Judge Larson—it is a wonderful family.

[Laughter.]

Senator FEINSTEIN. It is an amazing family, as you can probably see. But I will let Judge Larson at the appropriate time introduce his wife and children.

He is a native of Fontana. He is specifically nominated for a seat on the Federal bench in Riverside, California. He comes to this Committee very familiar with the court to which he is nominated. Since October of 2000, he has served as a magistrate judge for the Central District in Riverside.

He has spent his last 15 years in public service. Prior to becoming a magistrate judge, he was Assistant United States Attorney in the Central District of California, from 1991 to 2000, serving as Chief of the U.S. Attorney's Organized Crime Strike Force and as coordinator of its Russian Organized Crime Unit.

Judge Larson attended college here in Washington, at Georgetown University School of Foreign Service, from which he received a bachelor's of science in 1986. He then returned to California for law school, graduating from the University of Southern California Law School in 1989.

The American Bar Association has unanimously declared him to be well qualified, and it is evident—to me, at least—that he has very strong support within the Inland Empire. I have received a number of letters endorsing his nomination. Judge Larson, you might be pleased to know that these recommendations come from a very diverse cross-section of the Inland Empire's legal community—from judges and law professors, from Government attorneys and private practitioners, and from Democrats as well as Republicans. In these letters, Judge Larson is praised for his legal knowledge, and words like "fairness," "integrity," "hard work," "temperament," "intelligence," "patience," and "sense of social justice" are all present.

So I am very proud of the bipartisan judicial screening process that exists in California, because under this system a Committee of lawyers including Democrats and Republicans recommends qualified appointments to the President. And Judge Larson's nomination through this process gives me a great deal of confidence that he comes to the bench without an ideological agenda and is prepared to serve all of the people of California, as well, of course, as the law.

So Judge Larson, let me congratulate you. Perhaps if the two Senators don't mind—because this is such a beautiful family—would you mind just standing and introducing your family?

Judge LARSON. This is my wife Dena and my little daughter Michaela; and Joseph, Brendan, Patrick, Thomas—and I believe

Mary had to make a premature exit with my sister. They are right outside the door.

Senator FEINSTEIN. Thank you very much. And good luck, Judge.

Thank you, Mr. Chairman.

Senator DEWINE. Senator, thank you very much for that very nice introduction.

Senator Warner, Thank you for joining us.

Senator Allen, Thank you for joining us.

Senator Warner, we will recognize you.

PRESENTATION OF JOHN F. CLARK, OF VIRGINIA, NOMINEE TO BE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE, BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you very much.

Mr. Chairman and other members of the Committee, I am pleased to introduce a long-time Virginian, John Clark, who has been nominated to serve as the Director of the United States Marshals Service. He is joined here today by his wife Lucy.

Would you kindly introduce your wife?

Mr. CLARK. This is my wife, Lucy.

Senator WARNER. As you know, the Marshals Service is the Nation's oldest Federal law enforcement agency—a point in history I think is worth remembering. When originally created in 1789, President Washington nominated 13 U.S. Marshals for Senate confirmation. Today, more than 200 years later, America has 94 U.S. Marshals and the Marshals Service employs more than 4,800 Deputy Marshals and employees.

The Director of the Marshals Service serves as the Agency's head. The Director's job is not only to effectively manage the Agency's nearly 5,000 employees, but also to ensure that the Marshals Service continues to accomplish its many day-to-day missions, from courthouse security, witness security, fugitive investigations, and prisoner detention services. The Director of the Marshals Service, without a doubt, has a very difficult and challenging job. This already tough job was made even more challenging in the post-9/11 world, particularly with respect to the unique security challenges that terrorism places upon the entire law enforcement structure of our nation.

John Clark, in my humble judgment, is up to that responsibility in every respect. For the past 6 months, he has had the privilege of serving as the Acting Director of the Marshals Service. His past experience served him well for that position. Prior to taking over as the Acting Director, Mr. Clark worked for nearly 3 years as the United States Marshal for the Eastern District of Virginia, the very district that prosecutes most of America's high-profile terrorist-related cases. How fortunate we are in Virginia to have someone with his experience to take on this responsibility.

I would now like to ask that the balance of my statement be placed in the record.

Senator DEWINE. It will be made a part of the record, Senator.

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

Senator WARNER. I defer to my colleague. I am chairing a hearing downstairs, so I must leave.

Senator DEWINE. We understand. Thank you very much, Senator.

Senator Allen.

PRESENTATION OF JOHN F. CLARK, OF VIRGINIA, NOMINEE TO BE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman, Senator Feinstein, members of the Committee. I join with my good friend and colleague, Senator Warner, in giving my highest recommendation of John Clark in his position and nomination as Director of the United States Marshals Service. Those of us from Virginia believe this is an outstanding nomination, not just for Virginia but for our entire country.

Let me add a few details to what Senator Warner said. John Clark, if you look at his record, has served this country very well for 22 years in a career with the Marshals Service, most recently as Acting Director since August of 2005. Prior to being named Director, he was the U.S. Marshal for the Eastern District of Virginia. It is important to recognize some of the challenges he faced there in the Marshals Service and the courtrooms and some really important matters to make sure the courtrooms were safe and they were secure in the conduct of some very high-profile judicial proceedings, including that of convicted spy Robert Hansen, terrorist suspects John Walker Lindh and Zacarias Moussaoui, and several members of the very dangerous MS–13 gang.

Mr. Clark has extensive law enforcement experience. Prior to his role in the U.S. Marshals Service for the Eastern District, he served in a variety of positions, including Chief of Internal Affairs Division, Chief of the Internal Fugitive Investigations Division. And before joining the Marshals Service, he was a United States Capitol Police officer and a U.S. Border Patrol agent as well.

John Clark has worked diligently in support of creation of the Capitol Area Regional Fugitive Task Force, which, under the Marshals Service leadership, has joined Federal, State, and local law enforcement agencies from Baltimore, Maryland, to Norfolk, Virginia, in a cooperative, highly successful partnership to fight crime and remove dangerous fugitives from our streets and communities. The task force has been very effective in capturing some of this region's most violent criminals—for which we are very grateful. He has put together, just since being the Acting Director, working groups of operational and administrative personnel to review a variety of court security issues, a topic that I know is very important to members of this Committee and the judiciary. His steadfast leadership during this time really has delivered a message that judicial security remains a top priority.

So with his breadth and depth of experience, I have full confidence that the President has truly nominated a person with integrity, which is absolutely essential, since the motto of the Marshals Service is "Justice, Integrity, and Service." John Clark, in my view, meets all those requirements and then some. I am glad his bride

Lucy is here with him, and I hope that this Committee will move as expeditiously as possible to move this nomination forward toward confirmation.

And I thank you, Mr. Chairman and Senator Feinstein, for your attention and allowing me to be with you all this morning.

Senator DEWINE. Senator Allen, thank you very much. A great statement. And we know that you have other business as well, and we will excuse you. We thank you very much. Appreciate that.

At this point, as United States Senator from Ohio, I would like to say a few words to introduce my fellow Ohioan, Judge Jack Zouhary.

Before I do, I should mention that Senator George Voinovich sends his regrets. He is actually traveling with the President of the United States today in Ohio. He had hoped to be here to help introduce the Judge, but unfortunately is not able to do so. He does have a written statement which I will make part of the record at this point.

PRESENTATION OF JACK ZOUHARY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO BY HON. MIKE DEWINE, A U.S. SENTATOR FROM THE STATE OF OHIO

It is my pleasure and honor to introduce my fellow Ohioan, Judge Jack Zouhary, to the members of this Committee today. The Judge currently serves on the Lucas County Common Pleas Court bench. President Bush has nominated him to serve as a Federal judge in the Northern District of the State of Ohio.

Let me welcome the Judge's family members who are here with him today—his wife Kathleen, his daughters Katie Marie and Alexis. We thank all of you for joining us and welcome you to our Committee. We know that you are very proud of your husband and your father.

Judge Zouhary has had a long and accomplished legal career, a career with 30 years of legal experience that has given him the background and the understanding of our legal system to successfully take on the role of a Federal judge. He attended Dartmouth College, where he received his undergraduate degree before returning to his home town to earn his law degree at the University of Toledo College of Law.

The Judge began his legal career with Robison, Curphey and O'Connell, where he worked for 23 years as an associate and then as a partner. During this time, he had a varied practice, representing individuals and businesses on a range of legal issues with an emphasis on civil trial practice and corporate matters.

In the year 2000, the Judge became the Senior Vice President and General Counsel for S.E. Johnson Companies, Inc., a large highway contractor and asphalt producer. Judge Zouhary was responsible for all the corporation's legal issues, including environmental safety, human resources, contract negotiations, supervision of risk management, union grievances, and litigation.

In the year 2004, the Judge accepted a position as Of Counsel with the law firm of Fuller and Henry. He remained with Fuller and Henry until 2005, when he was appointed by Governor Bob Taft to the Lucas County Common Pleas Court. In Ohio the Com-

mon Pleas Court is our highest State trial bench that hears all major civil as well as criminal cases.

During his time as an attorney in private practice, the Judge distinguished himself as an excellent litigator. He was honored by being selected as a member of the prestigious American College of Trial Lawyers. This is notable because membership in the American College of Trial Lawyers is by invitation only and is limited to the best of the trial bar. Judge Zouhary clearly meets that criterion.

Even more important, Judge Zouhary has long been committed to the ideals of civility and professionalism in the legal field, something that sometimes we don't see enough of these days. He frequently has presented lectures focusing on legal ethics and civility in the practice of law for continuing legal education seminars. He is also a member of the Morrison Waite Chapter of the Inns of Court, a nationwide organization dedicated to improving the skills, professionalism, and ethics of the bench and the bar.

Judge Zouhary's commitment to serving the community as a professional is also exemplified by his membership in the Toledo Rotary Club as well as a broad range and array of other charitable activities ranging from pro bono work for a local church to service at a community soup kitchen.

Although he has been a common pleas judge for only a relatively short period of time, Judge Zouhary has already begun to distinguish himself on the bench. He has been working diligently to clear a very large backlog of cases on his crowded docket and successfully made a good deal of headway in that effort. Most important, attorneys who have appeared before him, criminal and civil, prosecution and defense, speak in glowing terms of his talent, his fairness, and excellent judicial temperament.

With Judge Zouhary's impressive record as a legal professional and community leader, it should come as no surprise that the American Bar Association was unanimous in giving him its highest rating of Well Qualified.

Judge Zouhary is an outstanding nominee, and I gladly, I gladly join his supporters in the belief that he will serve as a great Federal judge for the Northern District of Ohio.

Let me ask all of the three nominees to now come forward and sit where your name tag is. I would ask you to remain standing, if you would. I will swear you in. Will you all raise your right hand, please?

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

Judge LARSON. I do.

Judge ZOUHARY. I do.

Mr. CLARK. I do.

Senator FEINSTEIN. Mr. Chairman, may I ask that series of letters concerning Judge Larson be entered into the record?

Senator DEWINE. Those will certainly be made a part of the record.

We would invite each one of you to make any opening statement that you would like to make. Judge Larson, we would start with you. And we would invite you to introduce any family members

that have not been introduced. Or if you would like to introduce them again, that would be fine.

STATEMENT OF STEPHEN G. LARSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge LARSON. Well, thank you very much, Mr. Chairman.

Senator DEWINE. It is just kind of a family day here today.

[Laughter.]

Judge LARSON. Well, thank you very much, Mr. Chairman, Senator Feinstein. It is a tremendous honor, a real privilege to be here this morning.

I want to thank the Senate Committee for inviting me, for holding this hearing. I want to thank the Senate staff for all of their hard work. I do want to thank the President as well for his confidence in nominating me and for his counsel, and all of the individuals all they way down to the bipartisan committee that Senator Feinstein referred to. And also, my colleagues on the judiciary for their encouragement. I know we have members of the Administrative Office here today. I appreciate their support.

I would like to take a moment to introduce a few family members that I hadn't previously introduced.

Senator DEWINE. That would be great.

Judge LARSON. My mother and my father are here today, Dale and Sheila Larson.

Senator DEWINE. Why don't you all stand up? I know you are very proud. Thank you.

Judge LARSON. My sister Marette. And then, of course, you met previously my wife Dena and the six wonderful children.

Senator DEWINE. And what is the age range?

Judge LARSON. The oldest, Michaela, is 9. She's in fourth grade. And it goes all the way down to Mary, who unfortunately had to step out for a moment. She just turned 1 a few weeks ago.

Senator DEWINE. Very good.

Judge LARSON. She's out there with her brother Thomas, who's 2, who suffers from the terrible twos right now.

[Laughter.]

Senator DEWINE. Well we welcome them. Very good.

Judge LARSON. Well, thank you very much. Like I say, it's truly a privilege to be here. If confirmed and if appointed, I truly will do all I can to continue my public service to this country and to assist as I can the Nation in its making true its promise of equal justice under law.

[The biographical information of Judge Larson follows.]

QUESTIONNAIRE FOR JUDICIAL NOMINEES

STEPHEN GERARD LARSON

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Stephen Gerard Larson

2. **Address: List current place of residence and office address(es).**

Place of residence: Upland, California

Office address: United States District Court
George E. Brown, Jr. Courthouse
3470 12th Street
Riverside, CA 92501

3. **Date and place of birth.**

Date of birth: October 26, 1964
Place of birth: Fontana, California

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to: Dena Janine Larson
Maiden name: Dena Janine Nordman
Occupation: Homemaker

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Georgetown University, School of Foreign Service
1982-1986, BSFS (1986)

University of Southern California Law School
1986-1989, JD (1989)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

2000-present	United States Magistrate Judge United States District Court Central District of California
2002-present	University of LaVerne College of Law Ontario, California (adjunct professor)
1995-present	Pipcus Charitable Trust (member, Board of Trustees) (non-compensated)
2001-2005	California Southern Law School Riverside, California (instructor)
1997-2001	Glendale College of Law Glendale, California (adjunct assistant professor)
1991-2000	Assistant United States Attorney Central District of California
1995-1999	California State University, Long Beach Long Beach, California (lecturer)
1988-1991	O'Melveny & Myers, LLP Los Angeles, CA 1988 Summer Associate 1988-1989 Law Clerk 1989-1991 Associate
1988-1989	Daniel Murphy Catholic High School Los Angeles, CA (part-time teacher)
1988	Davis Polk & Wardwell New York, NY (summer associate)
1987-1988	Thorpe & Thorpe Los Angeles, CA (law clerk)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Junior Fellowship, Institute for the Study of Diplomacy, Georgetown University.

Merrick Medal, Philodemic Society, Georgetown University.

National Political Science Honor Society.

Department of Justice Director's Award for Superior Performance as an Assistant United States Attorney.

Department of Justice Special Achievement Award for Sustained Superior Performance of Duty (twice) and for Meritorious Acts and Service.

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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 (Inland Empire Chapter), President (2001-2002); Member, Board of Directors (1997-2005); Chapter Delegate to the National Council (2000-2001 and 2003-2004); appointed by national president as Government Relations Committee member (2002-2006).

Riverside County Bar Association.

Leo A. Deegan Inn of Court, Judicial Master (2005-2006).

Irish-American Bar Association.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

To my knowledge, none of the organizations to which I belong lobby before public bodies. I belong to the following organizations:

Volunteer Center of Riverside County, Riverside, California.

VIP Mentors, Inc., aka Volunteers in Parole, Inc., Riverside, California.

Upland YMCA, Upland, California.

Claremont Club (athletic club), Claremont, California.

Saint Thomas More Society, Los Angeles, California.

Georgetown Club of Greater Los Angeles/Alumni Admissions Program.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

California Supreme Court, December 11, 1989
(voluntary inactive status effective December 1, 2002, as a result of appointment as a Magistrate Judge)

United States District Court for the Central District of California, December 11, 1989

United States Court of Appeals for the Ninth Circuit December 11, 1989

Supreme Court of the United States, September 17, 1999

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

"The Road to Tashkent," Riverside County Lawyer, Riverside County Bar Association, January 2004 (copy attached).

"Lawyers of Earlier Times Teach Lessons that Endure," Student Lawyer, Law Student Division: American Bar Association, May 2003 (copy attached).

Co-author "Labor Law," The O'Melveny & Myers Guide to Acquisition and Management of a U.S. Business, A Eurostudy Special Report (1991), which was published in both the United Kingdom and Japan (copy attached).

I recall submitting a few letters to college and law school newspapers but I have been unable to locate any copies or transcripts.

Below is a complete listing of all my speeches. Most of these speeches were not delivered from a prepared text, and any notes or outlines no longer exist. The only prepared texts that I have been able to locate are the commencement speech I delivered to the University of La Verne College of Law and California Southern Law School at the end of the 2003-2004 academic year (I delivered the same speech at both schools), and the "Vaulting the Bench: From Advocate to Jurist" speech I delivered to the Federal Bar Association (Inland Empire Chapter) in March, 2001. Both of these speeches are attached.

Commencement Speaker, 159th Basic Law Enforcement Academy Graduation, San Bernardino County Sheriff's Academy, June 9, 2005.

Member of Faculty, Seminar on Advanced Asset Forfeiture, Money Laundering and Organized Crime, Hong Kong S.A.R. and Taipei, Republic of China, May, 2005.

"Federal Bench and Bar in the Inland Empire," Riverside County Bar Association, Riverside, California, January, 2005.

Radio Interview, "Let's Talk," Inland Empire Today, KVCR 92.1-FM; December 27, 2004.

"Giving Back," L.I.F.E. ("Learning is For Ever") Society, University of California, Riverside, University Extension, Riverside, California, November 2004.

"Renewing Our Spirit, Uniting Our Community," San Bernardino Community Summit, San Bernardino, California, October, 2004.

Speaker, Asian Pacific Fraud Summit, Sydney, Australia and Auckland, New Zealand, August, 2004.

Commencement Speaker, California Southern Law School, June 2004.

Commencement Speaker, University of LaVerne College of Law, May 2004.

"Settlement in Federal District Court," Greater Inland Empire Municipal Lawyer's Association, Colton, California, May 2004.

Speaker, Volunteers in Parole Annual Recognition Luncheon, Riverside, California, April, 2004.

"Croatian War Crimes Trials: An Insider's Perspective," Riverside County Bar Association, March 2004.

"Guide to Pleadings and Discovery in Federal Court," Federal Bar Association Inland Empire Chapter and Inland Empire Bankruptcy Forum, February 2004.

Member of Faculty, Seminar on Regional Conference on Priority Criminal Justice Sector Reforms in Central Asia, Tashkent, Uzbekistan, November, 2003.

Commencement Speaker, California Southern Law School, June 2003.

Speaker, Corporate Fraud Conference, Federal Bureau of Investigations, Marina Del Rey, California, December, 2002.

Panelist, Culture and the Legal System, California Sociological Association, Thirteenth Annual Meeting, Riverside, California, October 2002.

Member of Faculty, Seminar on International Conference on Transnational Organized Crime and Terrorist Organizations, Nemzetközi Rendészeti Akadémia - International Law Enforcement Academy, Budapest, Hungary, June 2002.

Commencement Speaker, Glendale University College of Law, May 2002.

Panelist, Asset Forfeiture, Federal Bureau of Investigation, Philadelphia and Las Vegas, April/May 2002.

Panelist, Police Liability in California, "Protective Orders in Police Liability Cases Filed in U.S. District Court" and "Expert Testimony in Police Cases Filed in U.S. District Court," Lorman Education Services, Los Angeles, California, January 2002.

Speaker, "e is for Evidence: Finding, Preserving and Authenticating Electronic Evidence," Kroll & Associates, Los Angeles, California, November 2001.

"Discovery of Computer Information in Criminal and Civil Federal Cases," High Tech Crime Investigation Association (HTCIA) International Conference, Long Beach, California, September 2001.

"Amendments to Federal Rules of Civil Procedure," Federal Bar Association (Los Angeles Chapter) Los Angeles, California, May 2001.

"Vaulting the Bench: From Advocate to Jurist," Federal Bar Association (Inland Empire Chapter) Riverside, California, March 2001.

Panelist, Money Laundering and Asset Forfeiture: A Practical Case Seminar, presented to the Guardia di Finanza at the Comando Scuola Polizia Tributaria in Rome, Italy, and the Maltese National Police at the Police Academy at Fort Saint Elmo, Malta, June 2000.

Guest Lecturer, Law Department, University College Cork, Cork, Ireland, October 1999.

Speaker, FBI's Eighth Annual Financial Institution Fraud Seminar, Los Angeles, California, September 1999.

Speaker, IRS Continuing Professional Education Conference (IRS Southern District), North Island Naval Base, San Diego, California, August 1999.

Speaker and United States delegate, Prosecuting Transnational Organized Crime, International Specialist Training Center in Legionowo, Poland, June 1999.

Speaker, Fraud Control Seminar, sponsored by International Association of Financial Crimes Investigators, Monterey, California, April 1999.

Speaker, FBI Russian Organized Crime Seminar, Long Beach, California, February 1999.

"Federal Sentencing Guidelines," Federal Bar Association (Inland Empire Chapter), Riverside, California, January 1999.

Guest Lecturer, Money Laundering and Asset Forfeiture In-service Training Seminar, FBI National Academy, Quantico, Virginia, January 1999.

Panelist, Prosecutorial Workshop: Organized Crime, sponsored by Russian Office of the General Procuracy and DOJ Office of Overseas Prosecutorial Development Assistance and Training ("OPDAT"), including a guest lecture at the Law Institute of the Far East State University, Vladivostok, Russia, November 1998.

Speaker, Transnational Organized Crime, Hawaii State Law Enforcement Officials Association Conference, Honolulu, Hawaii, September 1998.

Speaker, Russian Organized Crime Workshop, sponsored by State of California Department of Justice, Long Beach, California, May 1998.

Speaker and United States delegate, Combating Organized Crime in the Asia Pacific Region: Organization and Coordination Problems, Institute for Prosecutorial Training, Russian Office of the General Procuracy, jointly sponsored by the Asia Foundation and OPDAT; Irkutsk, Russia, November 1997.

Speaker and United States delegate, Organized Crime Seminar, sponsored by City of Moscow Procurator's Office and OPDAT, Moscow, Russia, March 1997.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

State of health: Excellent
Date of last physical: August 18, 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

United States Magistrate Judge for the Central District of California. I was appointed in 2000 by the United States District Court for an eight-year term. The jurisdiction and powers of a Magistrate Judge are set forth at 28 U.S.C. § 636.

The standard duties of Magistrate Judges in the Central District of California include, among other

things, conducting civil pretrial matters, evidentiary proceedings, and settlement conferences; conducting state and federal habeas litigation; trial and disposition of criminal misdemeanor cases; conducting foreign extradition proceedings and preliminary proceedings in criminal felony cases including the issuance of criminal complaints, arrest warrants, search and seizure warrants, and conducting initial appearances, bail and detention hearings, preliminary hearings, and arraignments; social security appeals; jury and non-jury trial and disposition of civil cases upon litigants' consent; and conducting naturalization ceremonies.

5. Citations: **If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

(1) Citations for the ten most significant opinions I have written are as follows:

i. Jesus D. Parra v. Jo Anne B. Barnhart
CDC Case No. EDCV 04-207-SGL (copy attached)
Filed: September 1, 2005

In an appeal from a decision by the Appeals Council and an Administrative Law Judge denying plaintiff social security disability benefits, order affirming decision on the basis that a district court does not have jurisdiction to review the decision of the Appeals Council denying review when presented with new evidence.

ii. Preciliano Perea, et al. v. County of San Bernardino, et al.
CDC Case No. EDCV 04-154-SGL (copy attached)

In a Section 1983 lawsuit alleging wrongful death and accompanying state law claims, order denying qualified immunity to deputy but dismissing claims of substantive due process, negligent infliction of emotional distress, and negligence.

iii. Stephen J. Ranieri v. Cal Terhune
366 F.Supp.2d 934 (C.D.Cal. 2005)

Following Ninth Circuit remand of prior dismissal of habeas petition on basis of intervening case law (see 80 Fed.Appx. 598 (9th Cir. 2003)), District Judge Real adopted my Report and Recommendation dismissing habeas petition on grounds that (1) California timeliness rule was independent ground for default within procedural default rule; (2) California rule was adequate ground for default within procedural default rule; and (3) unexhausted claims alleging ineffective assistance of counsel were not cause that could excuse procedural default.

iv. Heritage Community Housing, Inc., et al. v. Anne J. Mazzella, et al.
CDC Case No. EDCV 04-1088-VAP (SGLx) (copy attached)

In a complaint seeking specific performance of a contact between plaintiff housing company and defendant owners of certain property, order denying defendants' motion to expunge lis pendens or, in the alternative, to request an undertaking on the grounds that plaintiffs established a probably validity to their claim for specific performance. Ruling on a motion for review and reconsideration filed with the District Court, District Judge Phillips upheld my order.

v. The Colonies Partners, L.P. v. San Bernardino County Flood Control District, et al.
CDC Case No. EDCV 04-253-SGL (copy attached)

In a Section 1983 case alleging that defendants had effected a taking across a 67-acre portion of property without providing just compensation, order granting motion to dismiss complaint as not ripe because plaintiffs failed to pursue and exhaust their inverse condemnation action in state court or otherwise successfully challenge the adequacy of the state procedures. The order further dismissed the related substantive due process claim as barred from federal review, and dismissed the equal protection claim with leave to amend for failure to allege the existence of comparable property owners.

vi. Russell Ray Rathert, Jr. v. George M. Galaza
CDC Case N. CV 02-1877-R (SGL) (copy attached)

In a federal habeas petition, Report and Recommendation recommending denial of petition on the grounds that (1) the trial court properly instructed the jury on the specific intent element of false personation; (2) that petitioner was not denied his Sixth Amendment right to fair notice of the charge against him; (3) that petitioner's counsel's representation was not constitutionally ineffective; and (4) that sufficient evidence supported the conviction. The Report and Recommendation was adopted by District Judge Real who entered final judgment.

vii. First Pacific Advisors, Inc. v. Vantagepoint Investment Advisors
CDC Case No. CV 01-821-SGL (copy attached)

In a breach of contract case, order finding as a matter of law that defendant investment company had not breached any provision of contract with plaintiff brokerage firm and granting summary judgment in favor of defendant. Decision affirmed by Ninth Circuit in opinion by Circuit Judges Graber and W. Fletcher and District Judge Fogel

(2005 WL 2219459 (9th Cir. 2005)).

viii. Charles W. Brady v. Dr. Attygala, et al.
196 F.Supp.2d 1016 (C.D.Cal 2002)

In Section 1983 action, order holding inmates' complaints involved "prison conditions" within the meaning of the Prison Litigation Reform Act and inmate was not required to appeal a favorable grievance decision before filing federal lawsuit.

ix. David M. Van Horn v. City of Temecula
CDC Case No. CV 01-422-SGL (copy attached)

In a case challenging the constitutionality of certain conditions imposed by defendant city for the archaeological excavation of a particular land development project, order granting defendant's motion to dismiss for lack of standing. Judgment affirmed by Ninth Circuit in opinion by Circuit Judges Goodwin, Trott, and Graber (52 Fed.Appx. 957 (9th Cir. 2002)).

x. Raymond Romero v. E. Roe
130 F.Supp.2d 1148 (C.D.Cal. 2001)

In a federal habeas petition, order holding that one-year limitation period was tolled during 15-month gap between inmate's original and successive state habeas petitions, but federal legal theories which were not contained in the habeas petition presented to the state supreme court were unexhausted.

(2) A summary of and citations for all appellate opinions where I was reversed are as follows:

China National Metal Products Import/Export Co. v. Apex Digital, Inc.
141 F.Supp.2d 1043 (C.D.Cal. 2001)

In a lawsuit over failure to pay for goods, I issued an order granting a writ of attachment where plaintiff exporter demonstrated that its claims against defendant buyer had a probability

of success, and exporter proved that any award it received in the arbitration before the China International Economic Trade Arbitration Commission (CIETAC) may be rendered ineffective absent a writ of attachment. On motion for review and reconsideration District Judge Timlin vacated my order. Although he affirmed the holding finding subject matter jurisdiction, Judge Timlin ruled that the agreement's provision for submission of disputes to CIETAC precluded issuance of pre-arbitral writ of attachment. See China National, 155 F.Supp.2d 1174 (C.D.Cal. 2001).

Of the over 425 federal habeas petitions and over 125 pro se civil rights cases for which I have submitted Reports and Recommendations or proposed dispositive orders to District Judges, there has only been one case in which the District Judge did not adopt my final dispositive recommendation. See Brent Allen Langford v. Diana K. Butler, CDC Case No. CV 00-7158-NM (SGL) (denying petitioner's claim of ineffective assistance of counsel - copy attached).

In four other cases (three federal habeas petitions and one pro se civil rights case), the District Judge adopted my Report and Recommendation but the Ninth Circuit subsequently reversed, vacated, or remanded the District Judge's decision, as set forth below:

i. Vladimir Soroka v. People of the State of California
97 Fed.Appx. 767 (9th Cir. 2004)

The Ninth Circuit vacated the judgment of District Judge Phillips' dismissal of petitioner's federal habeas petition as untimely, remanding and directing the District Court to hold an evidentiary hearing to consider alleged negligence by petitioner's attorney and petitioner's diligence in filing his petition.

ii. Timothy Jonathan Lundberg, et al. v. Grover Trask
54 Fed.Appx. 256 (9th Cir. 2002)

The Ninth Circuit affirmed in part, vacated in part, and remanded District Judge Hupp's dismissal of plaintiff's Section 1983 complaint for failure to state a claim. The Ninth Circuit upheld the District Court's holding that (1) arrestee's husband lacked standing to allege the deprivation of his wife's constitutional rights; (2) arrestee's claims against district attorney were barred given that a prosecutor's decision whether or not to prosecute was protected by absolute immunity; and (3) to the extent arrestee alleged that her questioning by a defendant detective violated her constitutional rights, her claim was barred because, if successful, that claim would necessarily imply the invalidity of a conviction in arrestee's pending criminal prosecution. However, the Ninth Circuit further found that the dismissal of the claim against the detective should have been dismissed without prejudice, not with prejudice, and remanded the case for entry of judgment dismissing the action without prejudice as to that defendant only.

iii. Clifton Lee Branch v. Diane Butler
45 Fed.Appx. 605 (9th Cir. 2002)

The Ninth Circuit reversed and remanded an order of District Judge Morrow denying petitioner's federal habeas petition, holding that petitioner's traverse, construed liberally, requested the District Court to order a transcript of a state court hearing relevant to petitioner's Marsden claim, which order should have issued pursuant to Rule 5 of the Rules Governing Section 2254 Cases.

iv. Avelino Mendez v. Larry Small
298 F.3d 1154 (9th Cir. 2002)

The Ninth Circuit reversed District Judge Timlin's judgment that had granted habeas petition on the grounds that petitioner had provided proper notice of his new address under sex offender registration

statute after he had provided his new address to county sheriff during booking process. The Ninth Circuit held that a California court's decision interpreting notification provision as requiring use of prescribed form was not objectively unreasonable application of federal due process law.

(3) Citations for significant opinions on federal or state constitutional issues.

In addition to those cases raising federal or state constitutional issues noted above, the following are citations to several Reports and Recommendations, all of which were adopted by the District Judge, that raise significant federal constitutional issues. Although by statutory definition all federal habeas petitions raise federal constitutional issues, I have only included those that have either been addressed in an opinion by the Ninth Circuit or resulted in a grant of the writ of habeas corpus. Of the over 425 habeas petitions I have been assigned, there were four petitions in which I recommended a grant - Langford and Mendez, cited above, and Duarte and Lockridge, cited below.

i. Anthony J. Duarte v. Tom Carey
CDC Case No. CV 02-7862-CAS (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation rejected constitutional challenges to California's Three-Strikes Law and California Evidence Code Section 1109, authorizing admission of past bad acts evidence in a prosecution for domestic violence, but recommended granting the petition on the ground that the instruction the trial court gave to the jury on how it could use evidence concerning petitioner's past acts of domestic violence violated petitioner's constitutional right to a fair trial. The Report and Recommendation was adopted by District Judge Snyder, who entered final judgment granting the petition. The decision was affirmed by the Ninth Circuit in an opinion by Circuit Judges Beezer,

Hall, and Silverman (120 Fed.Appx. 106 (9th Cir. 2005)).

ii. Bryan K. Lockridge v. D. Adams
CDC Case No. CV 03-783-LGB (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation recommended granting the petition on the grounds that the trial court violated petitioner's Sixth Amendment right to trial by jury and Fourteenth Amendment due process rights when it refused his request to give a self-defense instruction. The Report and Recommendation was adopted by District Judge Baird, who entered final judgment granting the petition. An appeal before the Ninth Circuit is pending.

iii. Robert L. Tolbert v. A.A. Lamarque, Warden
CDC Case No. CV 00-8413-ABC (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation recommended denying the petition on the grounds that the trial court did not improperly admit into evidence an inculpatory note that petitioner claimed was obtained in violation of his Sixth Amendment right to counsel and California's statutory attorney-client privilege. The Report and Recommendation was adopted by District Judge Collins, who entered final judgment dismissing the petition with prejudice. The decision was affirmed by the Ninth Circuit in an opinion by Circuit Judges Schroeder, Pregerson, and Trott (126 Fed.Appx. 428 (9th Cir. 2005)).

iv. Patricia Wright v. Gwendolyn Mitchell, Warden
CDC Case No. CV 02-4650-NM (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation recommended denying the petition on the ground that no due process violation resulted from the delay in initiating the underlying state criminal proceedings or from the trial court's failure to hold a full competency hearing. The Report and Recommendation was adopted by District Judge Manella, who entered final judgment

dismissing the petition. The decision was affirmed by the Ninth Circuit in an opinion by Circuit Judges Sneed, Skopil, and Leavy (97 Fed.Appx. 800 (9th Cir. 2004)).

v. Jose Garcia v. D.L. Runnels, Warden
CDC Case No. CV 02-6613-ABC (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation recommended denying the petition with prejudice on the grounds that petitioner was not denied effective assistance of counsel under the Sixth Amendment. The Report and Recommendation was adopted by District Judge Collins, who entered final judgment dismissing the petition. The decision was affirmed by the Ninth Circuit in an opinion by Circuit Judges O'Scannlain and Rawlinson and District Judge Whaley (2005 WL 1926431 (9th Cir. (Cal.)).

vi. Rodney Turner v. Joe McGrath, Warden
CDC Case No. CV 02-528-FMC (SGL) (copy attached)

In a federal habeas petition, my Report and Recommendation recommended dismissing the petition with prejudice as time-barred. The Report and Recommendation was adopted by District Judge Cooper, who entered final judgment dismissing the petition with prejudice. The decision was affirmed by the Ninth Circuit in an opinion by Circuit Judges B. Fletcher, Noonan, and Paez (121 Fed.Appx. 209 (9th Cir. 2005)).

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Assistant United States Attorney for the Central District of California; 1991-2000; appointed by United States Attorney General William P. Barr.

17. **Legal Career:**

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

1. **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:** No.

2. **whether you practiced alone, and if so, the addresses and dates:** No.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each:**

1991-2000
United States Attorney's Office
Central District of California
312 North Spring Street
Los Angeles, CA 90012

Assistant United States Attorney
Chief, Organized Crime Section

1988-2000
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071

Associate (1989-1991)
Law Clerk (1988-1989)
Summer Associate (1988)

1988
Davis Polk & Wardwell
1 Chase Manhattan Plaza
New York, NY

Summer Associate (1988)

1987-1988
Thorpe & Thorpe
601 West Fifth Street
Los Angeles, CA 90071

Law Clerk

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1989 to 1991 I worked as an associate at O'Melveny & Myers in Los Angeles in the litigation department, where my practice focused on general civil litigation, including securities fraud defense, labor law, breach of contract, environmental tort litigation, and intellectual property law.

From 1991 to 2000 I worked as an Assistant United States Attorney in Los Angeles where I prosecuted hundreds of cases involving virtually all areas of federal criminal law.

From 2000 to the present I have worked as a United States Magistrate Judge in Los Angeles and in Riverside. As a Magistrate Judge I handle federal habeas petitions, pro se civil rights cases, social security appeals, discovery disputes in all civil cases, settlement conferences, felony criminal matters through indictment and misdemeanor criminal matters through trial, and, through a direct-assignment pilot project adopted by the District Court, for the past two years I have been assigned over 200 civil cases - representing the full panoply of federal civil cases from civil rights to intellectual property to government tort claims - to adjudicate through final disposition.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While at O'Melveny & Myers, I worked with various litigation teams who represented such clients as General Motors (franchise and dealership issues), Exxon (environmental tort defense), Lockheed Martin (securities fraud defense), and International Rectifier (intellectual property).

While at the United States Attorney's Office, my only client was the United States.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My courtroom experience while at O'Melveny & Myers was limited to assisting at two federal trials and a state administrative hearing. I also argued several motions in state superior court.

I have had virtually daily courtroom experience in federal district court since 1991, first as an Assistant United States Attorney and now as a United States Magistrate Judge.

2. What percentage of these appearances was in:

(a) federal courts: 95%

(b) state courts of record: 3%

(c) other courts: 2%

3. What percentage of your litigation was:

(a) civil: 40%

(b) criminal: 60%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Of the 24 trials in federal district court that I tried to verdict or judgment, I was sole counsel in all but two; I also assisted while at O'Melveny & Myers at 2 federal trials and 1 state administrative hearing.

5. What percentage of these trials was:

(a) jury: 95%

(b) non-jury. 5%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

In the following I represented the United States:

(1) United States v. Hovsep Mikaelian, et al.
CR 95-865-GHK and CR 95-866-GHK
United States v. Youssef Keroles, et al.
CR 95-767-JMI
United States v. Ghugas Yamukian
CR 97-391-ABC

Solo criminal prosecution of a 43-defendant racketeering case involving members of a Russian-Armenian organized crime family convicted of narcotics trafficking, excise tax evasion, money laundering, and telecommunications fraud; investigative stage involved preparation of 16 wiretap applications, 52 search warrants, and seizure warrants for $5 million in property and assets; prosecutive stage included asset forfeiture proceedings, three separate jury trials in three different federal courts (before Hon. George H. King, Hon. James M. Ideman, and Hon. Audrey B. Collins), five appeals and an oral argument before the Ninth Circuit resulting in two published opinions; 42 of 43 defendants convicted of various racketeering charges. 1994-1999.

Principal defense attorneys included:

Jan Handzlik, Howrey, Simon, Arnold & White, 550 S. Hope Street, Suite 1100, Los Angeles, CA 90071, 213-892-1802

Terry J. Amdur, 1939 Rose Villa Street, Pasadena, CA 91107, 626-449-9254;

William T. Graysen, 2049 Century Park East, #2670, Los Angeles, CA 90067, 310-557-9008;

Stanley I. Greenberg, 6080 Center Drive, #800, Los Angeles, CA 90045, 310-215-7509;

William S. Harris, 1499 Huntington Drive, #403, South Pasadena, CA 91030, 626-441-9300;

Angel Navarro, Deputy Federal Public Defender 321 East 2nd Street, Los Angeles, CA 90012, 213-894-2854;

Gregory Nicolaysen, 16000 Ventura Boulevard, #500, Encino, CA 91436, 818-998-2706;

Cornell J. Price, Ramsey & Price, 445 South Figueroa Street, #2640, Los Angeles, CA 90071, 213-612-0020;

Theodore A. Flier, Flier and Flier, 15821 Ventura Boulevard, Encino, CA 91436, 818-990-9500;

David A. Katz, 433 North Camden Drive, #600, Beverly Hills, CA 90210, 310-288-1995;

Jay L. Lichtman, 3550 Wilshire Boulevard, #2000, Los Angeles, CA 90010, 213-386-3878;

Anthony P. Brooklier, Donald B. Marks, Marks & Brooklier, 10100 Santa Monica Boulevard, Suite 300, Los Angeles, CA 90067, 310-772-2287;

Bradley W. Brunon, 12100 Wilshire Boulevard, 15th Floor, Los Angeles, CA 90025, 310-820-4484;

Alan I. Rubin, Adelson & Rubin, 11755 Wilshire Boulevard, 15th Floor, Los Angeles, CA 90025, 310-473-6447;

Marcia J. Brewer, 300 Corporate Pointe, #330 Culver City, CA 90230, 310-670-5325;

Morton H. Boren (deceased)

Judith Rochlin, 10801 National Boulevard, #580, Los Angeles, CA 90064, 310-473-6208;

Lindsay A. Weston, PMB 283, 1411 West Covell Boulevard, #106, Davis, CA 95616, 530-756-7774

Stephen E. Webber, 3435 Wilshire Boulevard, #1800, Los Angeles, CA 90010, 213-386-2505;

Marc T. Little, 445 South Figueroa Street, #2600, Los Angeles, CA 90071, 213-612-7754;

Edward Robinson, 21515 Hawthorne Boulevard, #665, Torrance, CA 90503, 310-316-9333;

Manuel H. Miller, 5530 Corbin Avenue, #210 Tarzana, CA 91356, 818-401-0066;

Thomas Nishi, 1000 Wilshire Boulevard, #600, Los Angeles, CA 90017, 213-629-9066;

Vincent James Oliver, 205 South Broadway Street, #606, Los Angeles, CA 90012, 213-617-2307;

David R. Reed, 3699 Wilshire Boulevard, #850, Los Angeles, CA 90010, 310-854-5246;

Gail Ivens, P.O. Box 9647, Glendale, CA 91226, 323-254-8645;

Errol H. Stambler, 10880 Wilshire Boulevard, #1050, Los Angeles, CA 90024, 310-473-4525;

Haig Kaledjian, 1321 Mountain View Circle, Azusa, CA 91702, 323-682-2171;

Hagop Darakjian (deceased)

(2) United States v. Norik Satamian
CR 98-726-DDP

Solo criminal prosecution of three defendants for extortion, credit card fraud and immigration offenses before Hon. Dean D. Pregerson. 1997-1999.

Principal defense attorneys included:

Terrence Roden, Law Office of Terrence Roden, 626 Wilshire Blvd., #900, Los Angeles, CA 90017, 213-439-4900;

Mark B. Chassman, Chassman & Seelig, 350 South Figueroa Street, #580, Los Angeles, CA 90071, 213-626-6700;

Faribroz Rouzbehani, 170 South Beverly Drive, #316, Beverly Hills, CA 90212, 310-246-1616.

(3) United States v. Serguei Adoniev
CR 96-977-RAP

Solo criminal prosecution of one of the largest successful Russian organized crime money laundering cases in U.S. history before Hon. Richard A. Paez. Case involved tracking a complex money trail through five countries and the taking of a hostile deposition of the former Personal Assistant to the President of the Republic of Kazakhstan at the U.S. Embassy in Almaty; three of four defendants convicted of various counts of wire fraud, visa fraud, and money laundering charges, and the fourth was assassinated in a mob-style execution in St. Petersburg prior to arrest. 1994-1998.

Principal defense attorney was Stephen D. London, 1100 Poydras St., #2950, New Orleans, LA 71063, 504-582-2427.

(4) United States v. Arkady Rozenberg, et al.
CR 98-362-MMM
United States v. Michael Rapoport, et al.
CR 96-1116-LGB
United States v. Joseph Remesnitsky, et al.,
CR 99-560-JSL

Joint criminal prosecution (with Assistant United States Attorney Michael Zweiback, 312 North Spring Street, Los Angeles, CA 90012, (213) 894-2690) of three separate multi-million dollar, multi-defendant health care,

insurance fraud, and money laundering cases involving the prosecution of 15 individuals for fraudulent activities involving law practices, medical clinics, and management offices. All 15 defendants pleaded guilty to various counts of mail fraud, tax evasion and money laundering. Cases were prosecuted before Hon. Margaret M. Morrow, Hon. Lourdes G. Baird, and Hon. J. Spencer Letts. 1995-2000.

Principal defense attorneys included:

Michael Nasatir, Nasatir, Hirsch, Podberesky & Zenego, 2115 Main Street, Santa Monica, CA 90405, 310-399-3259;

Vicki Podberesky, Nasatir, Hirsch, Podberesky & Zenego, 2115 Main Street
Santa Monica, CA 90405, 310-399-3259;

Richard A. Moss, 255 South Marengo Avenue, Pasadena, CA 91101-2719, 626-796-7400;

Nathan J. Hochman, Hochman, Salkin Toscher & Perez, 9150 Wilshire Boulevard, #300, Beverly Hills, CA 90212-3414, 310-281-3200;

Alex R. Kessel, 16000 Ventura Boulevard, #1208, Suite 1208, Encino, CA 91436, 818-995-1422;

Gregory Nicolaysen, 16000 Ventura Boulevard, #500, Encino, CA 91436, 818-998-2706;

Marcia J. Brewer, 300 Corporate Pointe, #330, Culver City, CA 90230, 310-670-5325;

Michael Garcia, Deputy Federal Public Defender, 321 East 2nd Street, Los Angeles, CA 90012, 213-894-2854;

Alan I. Rubin, Adelson & Rubin, 11755 Wilshire Boulevard, 15th Floor, Los Angeles, CA 90025, 310-473-6447;

Hector C. Perez, Perez & Associates, 12417 Ryan Lane, Cerritos, CA 90703, 562-402-1802;

Louis H. Bernstein, 2530 Wilshire Boulevard, Santa Monica, CA 90403, 310-453-7511;

Morton H. Boren (deceased)

Theodore S. Flier, Flier & Flier, 15821 Ventura Boulevard, #567, Encino, CA 91436, 818-990-9500;

Stuart Goldfarb, 16633 Ventura Boulevard, #1005, Encino, CA 91436, 818-788-9909;

Phillip I. Bronson, 16311 Ventura Boulevard, #1200, Encino, CA 91436, 818-784-9702;

Bernard J. Rosen, 1717 Fourth Street, 3rd Floor, Santa Monica, CA 90401, 310-451-4577;

Ann M. Semann-Beish, 825 Nimes Place, Los Angeles, CA 90067, 310-476-7032;

John Yzurdiaga, 800 Wilshire Boulevard, #1510 Los Angeles, CA 90017, 213-622-9262.

(5) United States v. Elia Tawil
CR 97-439-GHK

Solo criminal prosecution of deputy sheriff for perjury before the federal grand jury as well as for involvement in related excise tax evasion scheme. Defendant pleaded guilty before Hon. George H. King.

Principal defense attorney was Victor Sherman, 2115 Main Street, Santa Monica, CA 90405, 310-399-3259.

(6) United States v. Vincent D. Caci, et al.
CR 95-347-JGD

Solo prosecution of 14 defendant fraudulent telemarketing boiler room operation based in

Palm Springs, California, and organized by alleged organized crime figures from Buffalo, New York. Eleven pleaded guilty to wire fraud and related charges, and the remaining three were convicted at trial before Hon. John G. Davies. 1994-1997.

Principal defense attorneys included:

Daniel Hustwit, 555 West 5th Street, #3100, Los Angeles, CA 90013, 310-788-2677;

Terry J. Amdur, 1939 Rose Villa Street, Pasadena, CA 91107, 626-449-9254;

Michael D. Abzug, PMB 471, 137 North Larchmont Boulevard, Los Angeles, CA 90004, 310-337-4302;

Richard M. Callahan, 230 East Colorado Boulevard, #1200, Pasadena, CA 91101, 626-202-4060;

Olivia Karlin, Office Attorney General, 300 South Spring Street, #1700, Los Angeles, CA 90013, 213-897-0473;

Paul E. Potter, Potter Cohen & Samulon, 3852 East Colorado Boulevard, Pasadena, CA 91107, 626-795-0681;

Victor Sherman and Janet Sherman, Sherman & Sherman, 2115 Main Street, Santa Monica, CA 90405, 310-399-3259;

Anna Ho, 3353 West 168th Street, Torrance, CA 90504, 310-538-4388;

Michael Scott Meza, 333 City Boulevard W, Orange, CA 92868, 714-564-2501;

James R. Asperger, O'Melveny & Myers, 400 South Hope Street, Los Angeles, CA 90071, 213-430-6491;

Barbara Tarlow, 1000 American Media Way, Boca Raton, FL 33464, 561-989-1177;

Richard M. Steingard, 800 Wilshire Boulevard, #1510, Los Angeles, CA 90017, 213-622-3101;

Phillip A. Trevino, 137 North Larchmont Boulevard, #801, Los Angeles, CA 90004, 213-949-8000;

Wayne R. Young, 1247 Lincoln Boulevard, #53, Santa Monica, CA 90401, 310-394-0241;

Paul J. Fitzgerald (deceased)

(7) United States v. Kaspars Zandergs
CR 98-8568-MMM (SH)

Solo prosecution of extradition request from Latvia for murder suspect before Hon. Stephen Hillman. 1998-1999. Principal defense attorney was Michael Abzug, PMB 471, 137 N. Larchmont Blvd., Los Angeles, CA 90004, 310-337-4302

(8) United States v. Yasuyoshi Kato
CR 97-545-SVW

Joint prosecution (with Assistant United States Attorney Michael Zweiback, 312 North Spring Street, Los Angeles, CA 90012, 213-894-2690) of the largest individual embezzlement from a private company in California history. Defendant pleaded guilty to embezzling over $60 million from Day Lee Foods. 1996-1998.

Principal defense attorney was John Yzurdiaga, 800 Wilshire Boulevard, Suite 1510, Los Angeles, CA 90017, 213-622-9262.

(9) United States v. Akop Kirakosyan
CR 97-412-WDK
United States v. Raffie Eskandarian, et al.
CR 98-262-RAP
United States v. Arnou Aghamalian, et al.
CR 98-1038

Solo prosecution of 28 members of the largest ATM, credit card, and computer fraud syndicate in the western United States. All 28 defendants pleaded guilty to access device fraud before Hon. William D. Keller and Hon. Richard A. Paez. 1996-2000.

Principal defense attorneys included:

Richard G. Novak, 959 East Colorado Boulevard, Suite 1B, Pasadena, CA 91106, 626-396-9206;

Honorable Paul L. Abrams, United States District Court, 312 North Spring Street, Los Angeles, CA 90012, 213-894-8533;

Gerald C. Salseda, Deputy Federal Public Defenders, 321 East Second Street, Los Angeles, CA 90012, 213-894-2854;

Edward M. Robinson, 21515 Hawthorne Boulevard, #665, Torrance, CA 90503, 310-316-9333;

Karine Basmadjian, 411 North Central Avenue, #270, Glendale, CA 91203, 818-500-9343;

Mark I. Bledstein, 15915 Ventura Boulevard, #203, Encino, CA 91436, 818-995-0801;

Fiona A. Brook, Brook & Associates, 16000 Ventura Boulevard, #400, Encino, CA 91436, 818-995-0006;

Anthony P. Brooklier and Donald B. Marks, Marks & Brooklier, 10100 Santa Monica Boulevard, #800, Los Angeles, CA 90067, 310-772-2287;

Barry F. Hammond, 5900 Sepulveda Boulevard, #400, Van Nuys, CA 91411, 818-988-0457;

David A. Elden, 11377 West Olympic Boulevard, 10th Floor, Los Angeles, CA 90064, 310-478-3100;

Andrew Reed Flier, Flier & Flier, 15821 Ventura Boulevard, #567, Encino, CA 91316, 818-990-9500;

Daniel A. Guerrero, 2 North Lake Avenue, #1080, Pasadena, CA 91101, 626-564-9551;

William J. Hardy, P.O. Box 2848, Malibu, CA 90265, 818-971-2005;

William P. Healy, 16 Audubon Lane, Flagler Beach, FL, 32136, 386-439-2761;

Michael D. Abzug, PMB 471, 137 North Larchmont Boulevard, Los Angeles, CA 90004, 310-337-4302;

Terry J. Amdur, 1939 Rose Villa Street, Pasadena, CA 91107, 818-449-9254;

Morton H. Boren (deceased)

Marcia J. Brewer, 300 Corporate Pointe, #330, Culver City, CA 90230, 310-670-5325;

Mark B. Chassman, Chassman & Seelig, 350 South Figueroa Street, #580, Los Angeles, CA 90071, 213-626-6700;

Christopher S. Dombrowski, 28118 Agoura Road, Suite 201, Agoura Hills, CA 91301, 818-338-3401;

Brian A. Newman, 300 Corporate Pointe, #330, Culver City, CA 90230, 310-417-3835;

Arnold M. Notkoff, Nortkoff & Curran, 400 South Beverly Drive, Suite 214, Beverly Hills, CA 90212, 213-624-5548;

Gregory Rubel, 16000 Ventura Boulevard, #400, Encino, CA 91436, 818-995-0006;

Gerald V. Scotti (deceased)

Robert L. Shapiro, Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, 10250 Constellation Boulevard, 19th Floor, Los Angeles, CA 90067, 310-556-7886;

Errol H. Stambler, 10880 Wilshire Boulevard, #1050, Los Angeles, CA 90024, 310-473-4525;

Fariborz Rouzbehani, 170 South Beverly Drive, #316, Beverly Hills, CA 90212, 310-246-1616;

Kimberly A. Urie, Segal & Kirby, 770 L Street, #1400, Sacramento, CA 95814, 916-441-0828;

(10) United States v. Adel Nasrallah, aka Eddie Nash
CR 00-523-CRM

Led a four-year investigation (with co-counsel Assistant United States Attorneys Michael Zweiback and Dan Saunders, 312 North Spring Street, Los Angeles, CA 90012; Mr. Zweiback's telephone number is 213-894-2690 and Mr. Saunders' telephone number is 213-894-2272) of Racketeer Influenced Corrupt Organization (RICO) run by renowned gangster Eddie Nash, which resulted in a Grand Jury indictment for racketeering, four 20-year-old murders, witness and trial juror bribery related to a ten-year-old state murder case in which the jury hung for conviction by one vote, narcotics trafficking, tax evasion,

wire fraud, and money laundering. The defendant pleaded guilty to various charges (including a murder conspiracy charge) following my appointment as a Magistrate Judge. The guilty plea and sentencing before Hon. Carlos R. Moreno were handled by AUSAs Saunders and Zweiback. 1997-2000.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

(1) Settlement Conferences.

I have one of the highest rates amongst all of the Magistrate Judges of the Central District both in terms of the number of settlement conferences conducted and percentage of cases successfully resolved (over 80% during the past three calendar years). Not only do I conduct settlement conferences for District Judges of the Eastern Division, but I have also conducted a significant number of settlement conferences for cases assigned to other judges in the Western (Los Angeles) and Southern (Santa Ana) divisions in which the parties have sought my assistance.

(2) Rule of Law Work

I have continued to participate in the Justice Department and State Department's efforts to promote understanding of the American judicial system and the importance of the rule of law that I first became involved with while a federal prosecutor: In 2004 I traveled to Zagreb, Croatia, as a judicial consultant for a State Department war crimes assessment team; in 2003 I traveled to Tashkent, Uzbekistan, to lecture at a regional summit on criminal justice reform sponsored by DOJ; and in 2002 I traveled to

Budapest, Hungary, as part of the teaching faculty at an international conference on terrorism and organized crime at the International Law Enforcement Academy.

During my legal career I have also taught criminal justice-related courses and seminars at various legal training institutions around the world, including the FBI National Academy in Quantico, Virginia; the Institute for Prosecutorial Training in Irkutsk, Russia; the Law Institute of the Far East State University in Vladivostok, Russia; the International Specialist Training Center in Legionowo, Poland; the Comando Scuola Polizia Tributaria in Rome, Italy; the Police Academy at Fort Saint Elmo, Malta; the Hong Kong Police Department in Hong Kong S.A.R., People's Republic of China; and the Bureau of Investigation of the Ministry of Justice in Taipei, Republic of China.

(3) Academic Work

I have been teaching as an adjunct professor of law at both of the law schools located in the Eastern Division: From Fall, 2001, through Spring, 2005, I taught the course on constitutional law at California Southern Law School in Riverside, California, and I have also taught semester classes in federal courts, conflicts of laws, and civil rights law at the University of LaVerne Law School in Ontario, California.

I was selected as the Commencement Speaker by the students of California Southern for both the graduating classes of 2003 and 2004, and I was also selected as the Commencement Speaker for the University of La Verne graduating class of 2004.

Prior to my appointment to the Eastern Division, I taught from 1997 through 2001 the constitutional law class at Glendale University College of Law in Glendale, California, where students selected me as their Commencement Speaker in 2002. From 1995 to 2000, I also served as a lecturer for the Criminal Justice Department at California State

University at Long Beach where I taught classes in Advanced Criminal Law, Legal Aspects of Corrections, and Contemporary Legal Issues.

II. FINANCIAL DATA AND CONFLICT OF INTEREST
(PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have savings invested in the Federal Employees' Thrift Savings Program.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I presently own no stock or other interest in any entity, and maintain a conflicts list in my chambers for those attorneys whose practice before me might present a conflict. I personally review the Certificate of Interested Parties for every case to which I am assigned. Finally, I strictly comply with the Code of Conduct for United States Judges to avoid any actual or potential conflict of interest, and would continue to do so as a District Court judge.

3. **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 may wish to continue teaching at the University of La Verne College of Law. I have sought and received the necessary

approvals from the Chief Judges of the District Court and the Ninth Circuit Court of Appeals for such teaching in the past, and would do so again if I decide to continue teaching.

4. **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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

Please see attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

Please see attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Campaign Volunteer, Reagan-Bush 84
Campaign Volunteer, Bush-Quayle 88

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		595	000
Real estate owned-add schedule		975	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		15	000				
Cash value-life insurance							
Other assets itemize:							
TSP Contributions		125	000				
				Total liabilities		595	000
				Net Worth		530	000
Total Assets	1	125	000	Total liabilities and net worth	1	125	000
CONTINGENT LIABILITIES	None			GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 950,000
Vacant lot	25,000
Total Real Estate Owned	975,000
Real Estate Mortgages Payable	
Personal residence	$ 595,000

AO-10 Rev. 1/2004	**FINANCIAL DISCLOSURE REPORT** **NOMINATION FILING**	**Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)**

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Larson, Stephen G	U.S. District Court, CDCA	12/16/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	**5. ReportType** (check appropriate type) (•) Nomination, Date 12/15/2005 ( ) Initial ( ) Annual ( ) Final	**6. Reporting Period** 1/1/2004 to 12/1/2005
7. Chambers or Office Address U.S. District Court 3470 Twelfth Street, Rm. 260 Riverside, California 92501	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☑ NONE - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	

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

☑ NONE - (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Larson, Stephen G	12/16/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	Spring/Fall 2003	California Southern Law School	$5,000.00
2.	Spring/Fall 2004	California Southern Law School	$5,000.00
3.	Spring 2005	California Southern Law School	$2,500.00
4.	Summer/Fall 2003	University of La Verne College of Law	$5,000.00
5.	Summer/Fall 2004	University of La Verne College of Law	$5,000.00
6.	Spring/Summer Fall 2005	University of La Verne College of Law	$7,000.00

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

V. REIMBURSEMENTS – transportation, lodging, food, entertainment.

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	EXEMPT	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Larson, Stephen G	12/16/2005

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Larson, Stephen G	12/16/2005

PART II. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
[ ] NONE (No reportable income, assets, or transactions)									
Walt Disney Co.	A	Dividend							
Impax Laboratories		None							

Value Method Codes: Q – Appraisal; R – Cost (Real Estate Only); S – Assessment; T – Cash Market

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Larson, Stephen G	12/16/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IIIA. Filer's Non-Investment Income:

Additional income received during the reporting period as salary for U.S. Magistrate position.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Larson, Stephen G	12/16/2005

IX. CERTIFICATION.

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

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

Signature S Larson Date 12/16/05

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

III. GENERAL (PUBLIC)

1. **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 serve on the Board of Directors of the Riverside County Volunteer Center, a non-profit umbrella organization that administers and helps finance a large variety of social service programs in Riverside County, including a crisis/suicide hotline, a senior ombudsman advocacy program, and a transportation access program. I devote approximately 3 hours a month to my work with the Volunteer Center. In addition, I am a member of the Advisory Board of VIP Mentors, aka Volunteers in Parole, a non-profit organization that pairs attorney mentors with parolees to help them adjust to life outside of prison (to which I devote approximately one hour a month), and an honorary member of the Upland YMCA Board of Managers, where our primary focus has been on establishing a top-rate childcare program for low income families in our community. I am also active in a variety of community service programs associated with my church.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal**

courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

My understanding of the process in California is as follows: In each of the four judicial districts in California there is a bi-partisan Judicial Screening Committee composed of three Republicans and three Democrats. In order to be considered by the President, a candidate must be approved by the Judicial Screening Committee. I understand that I was approved following my second interview before the committee on June 6, 2005. On June 23, 2005, I was interviewed by the chairman of the Judicial Screening Committee and on July 11, 2005, I was interviewed by his vice-chairman. On August 9, 2005, I interviewed with members of White House Counsel and the Department of Justice. On September 21, 2005, I was notified by White House Counsel that the President authorized the Department of Justice to proceed with my background check and that I may be nominated pending the results of that investigation. After completing pre-nomination paperwork and undergoing a background investigation, I was nominated by the President on December 15, 2005.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I can only comment on this critique of judicial activism in the context of my view of the role of the judiciary in a democratic society. I view a strong judiciary as critical to a flourishing democracy. My reading of history is that those societies that have lacked an independent judiciary have invariably collapsed into dictatorships of various stripes.

Our founders wisely understood that our experiment in a republican form of government would only succeed if there was a judiciary dedicated to ensuring that the policy-making and policy-enforcing branches of the government followed the constitutional procedures enacted by the people and ensured that the safeguards of civil liberties set forth in the constitution were fairly and consistently enforced. Towards that end, our experience has revealed that four features are essential: First, the length of a judge's tenure must not depend on the will of a political official but rather must be secured; second, a judge must be assured of a salary and adequate resources that do not risk

being diminished as a result of a politically unpopular decision; third, a judge's decision must be subject to open review and submitted to criticism by his peers, the press, the Legislature, the Executive, and, most importantly, the public; and fourth, a judge must avoid conflicts of interest by the complete disclosure of the judge's financial affairs. The first three - tenure, undiminished salary, and a rigorous free press - are providently guaranteed by our Constitution; the last, full and complete financial disclosure, by Congressional legislation.

These features by themselves, however, do not guarantee an independent judiciary — it needs something more than that, it needs a certain collective mental state. Judicial independence requires *respect,* the respect not only of the co-equal branches of government — the Executive and Congress — but ultimately the respect of the people our government is designed to serve. Even when we vehemently disagree with the outcome of a particular judicial decision, the principle of judicial independence reminds us that succumbing to the temptation to politicize the work of the judiciary risks compromising that which we value most.

At the same time, and of equal importance, the critical role of judicial independence brings with it a critical responsibility - a sacred obligation, in my view - on the part of federal judges: Judges must interpret and apply the law, not make the law. Federal judges must always be mindful that they are courts of limited jurisdiction, and are empowered to decide cases only when one of the bases for jurisdiction is satisfied. Their decision must be predicated on an impartial determination of the facts, an interpretation of the law according to its plain language, and an evenhanded application of that law to the case or controversy pending before the judge. Precisely because judges are independent and not accountable to the electorate, judges may not act as though they were. A federal judge must always be mindful that he or she is to act as a *judge,* and not as a popularly elected legislator or executive.

AFFIDAVIT

I, STEPHEN GERARD LARSON, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12-22-05
(DATE)

(NAME)

ATTACHED
(NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of RIVERSIDE } ss.

On 12/22/05 (Date), before me, ROBERTA J. LONGRIDGE (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared STEPHEN G. LARSON (Name(s) of Signer(s))

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

ROBERTA J. LONGRIDGE
COMM. #1562886
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Comm. Expires March 22, 2009

WITNESS my hand and official seal.

Roberta J. Longridge
Signature of Notary Public

Place Notary Seal Above

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☒ Individual
☐ Corporate Officer — Title(s): _____
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☐ Attorney in Fact
☐ Trustee
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Senator DEWINE. Judge, thank you very much.
Judge Zouhary.

STATEMENT OF JACK ZOUHARY, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Judge ZOUHARY. Thank you, Mr. Chairman, for your kind opening remarks. I want to express also my appreciation to you, Senator DeWine, and also to Senator Voinovich, for your recommendation to the President, for his confidence and my nomination.

I also want to acknowledge the colleagues, the lawyers and judges, the family and friends back home who have lent their support during this process. Especially, I want to acknowledge the sacrifice of my parents. My father, if he were here today, I know would be very proud. My mother is back home in Toledo beaming, I am sure; my dear sisters back in Ohio, with their families; and last, certainly not least, but perhaps foremost, the love of my bride of 27 years, Kathleen.

And, Kathleen, why don't you stand?

[Ms. Zouhary stood.]

Judge ZOUHARY. And my two daughters, Katie Marie and Alexis, who have been traveled along with me on this judicial journey, and I very much appreciate all they have done.

And I appreciate the opportunity to be here today, and look forward to meeting the high expectations that people have laid out in front of me.

Thank you.

[The biographical information of Judge Zouhary follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Jack Zouhary

2. Address: List current place of residence and office address(es).

Residence:	**Office:**
Sylvania Township	**700 Adams Street**
Ohio	**Toledo, Ohio 43624**

3. Date and place of birth.

12/18/51
Toledo, Ohio

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Kathleen Louise Maher, nka Kathleen Maher Zouhary
Vice President and General Counsel
St. Luke's Hospital
5901 Monclova Road
Maumee, Ohio 43537

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Toledo College of Law (1973 - 1976) (JD June 1976)
Dartmouth College (1969 - 1973) (B.A. June 1973)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Jacobson's Department Store	**1973 - 1974**
Out of business	**Salesman**

Dale Anderson, Esq. **Now deceased**	**1974 - 1975** **Law Clerk**
Cline & Cook **300 Madison Avenue, Suite 1100** **Toledo, Ohio 43504**	**1975 - 1976** **Law Clerk**
Robison, Curphey & O'Connell **Ninth Floor, Four SeaGate** **Toledo, Ohio 43604**	**09/76 - 12/99** **Associate / Partner**
S. E. Johnson Companies, Inc. **1345 Ford Street** **Maumee, Ohio 43537**	**01/00 - 10/03** **Senior Vice President / General Counsel**
S. E. Johnson Committee **330 Louisiana Avenue** **Perrysburg, Ohio 43551**	**06/03 - 02/05** **Member**
Fuller & Henry, Ltd. **One SeaGate** **Suite 1700** **Toledo, Ohio 43604**	**01/04 - 03/05** **Of Counsel**
Common Pleas Court **Lucas County** **700 Adams Street** **Toledo, Ohio 43624**	**03/05 - present** **Judge**

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Dartmouth College
- **Rufus Choate Scholar**
- **Senior Thesis (Government / History)**

University of Toledo College of Law
- **Associate Editor Law Review**
- **Criminal Law Clinic**

American College of Trial Lawyers
- **Membership limited to those lawyers representing the highest in courtroom skills and ethics - less than one percent of Ohio lawyers**

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Current memberships:
American Bar Association
- **Litigation Section**
- **Various other sections over the years including Tort, Antitrust, Insurance, Construction, Corporate Counsel**

Ohio State Bar Association
- **Judicial Administration and Legal Reform Committee**
- **Various other committees over the years including Litigation**

Toledo Bar Association
- **Chair / Secretary of several court committees including Common Pleas, Court of Appeals, Federal Court, Bench Bar, Judicial Candidates**
- **Recently served on Harry Potter Mock Trial and Fee Grievance**

Inns of Court (Morrison Waite Chapter)

American College of Trial Lawyers

Dartmouth Lawyers Association

Prior Memberships
National Association of Railroad Trial Counsel
Ohio Association of Civil Trial Attorneys (OACTA)
Toledo Association of Civil Trial Attorneys (TACTA)
Federal Court Panel / ADR Neutral
Federalist Society
National Association of College and University Attorneys (NACUA)
Commercial Law League of America
Delta Theta Phi Legal Fraternity

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, none of the organizations to which I belong are active in lobbying. I belong to the following organizations:

Toledo Rotary Club
Toledo Museum of Art
Toledo Zoological Society
COSI
St. Luke's Hospital Pacesetter
WGTE TV 30/FM 91 Public Broadcasting
Dartmouth Club of Toledo
Automobile Association of American (AAA)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Ohio, 1976
Michigan, 1991
United States Supreme Court, 1993
U.S. District Court for the Northern District of Ohio, 1976
U.S. District Court for the Southern District of Ohio, 2001
U.S. District Court for the Eastern District of Michigan, 2000
Sixth Circuit Court of Appeals, 1982

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

University of Toledo Law Review
Case Note "Obscenity and Theatrical Productions"
6 U. Tol. L. Rev. (1974)

CLE Talks:

Date	Sponsor	Title
Various	National Association of Railroad Trial Counsel (NARTC) (various US locations)	Several talks over the years including topics such as whistle testimony in grade crossing cases ("Do You Hear What I Hear?"), expert testimony, opening and closing arguments, motions in limine and the application of Daubert.
Various	Walinski Annual Federal Court Seminar (Toledo)	Federal Civil Rule 26 And Disclosures: Kiss And Tell
Various	Toledo Bar Association (Toledo)	Notice of Appeal (When To File); Ethics (Legal Lore And More)
June 1999	Walinski Annual Federal Court Seminar (Toledo)	Civility In Litigation -- Why Can't We Be Friends?
October 1999	Toledo Bar Association (Toledo)	Civil Litigation Is Not An Oxymoron: Let's Be Friends!
March 2000	NARTC (Georgia)	Ethics: Civil Litigation Is Not An Oxymoron
June 2000	Walinski Annual Federal Court Seminar (Toledo)	Civil Litigation Is Not An Oxymoron -- Let's Be Friends!
October 2000	Toledo Bar Association (Toledo)	Civil Litigation Is Not An Oxymoron: Let's Be Friends!
December 2000	Ohio State Bar Association (Perrysburg)	Case For Civility In Litigation (co-sponsored by ACTL)
June 2001	Walinski Annual Federal Court Seminar (Toledo)	Civil Litigation Is Not An Oxymoron
October 2001	Ohio State Bar Association (Napoleon)	Ethics And Professionalism -- Civility
December 2001	Ohio State Bar Association (Columbus)	Ethics Teleconference Panel discussion with lawyers from Columbus, Cleveland and Cincinnati
July 2002	NARTC (Quebec, Canada)	Civil Litigation Is Not An Oxymoron (With French Subtitles)
October 2002	Corporate Counsel Symposium (Findlay)	Civility Among Lawyers: Tell Me More

* * *

Civic Talks:

2003-2004	**Rotary and American Legion Clubs**	**"Lawyers, Lessons And Laughs"**

* * *

Articles:

September 2004	**Toledo Women's Bar Association**	**Newsletter – Judicial Column**

13. Health: What is the present state of your health? List the date of your last physical examination.

Very Good
August 28, 2005

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Lucas County Common Pleas Judge
Appointed to fill unexpired term
March 2005 to January 2007
General jurisdiction: Civil and criminal

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

1. **None yet published**
2. **None**
3. **None**

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Unsuccessful candidate for Lucas County Common Pleas Court, 2004.

17. Legal Career:

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

1. 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;

No

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

No

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

Robison, Curphey & O'Connell **Ninth Floor** **Four SeaGate** **Toledo, Ohio 43604**	**09/76 to 12/99** **Associate / Partner**
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Fuller & Henry, Ltd. **One SeaGate** **Suite 1700** **Toledo, Ohio 43604**	**01/04 to 03/05** **Of Counsel**

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Robison, Curphey & O'Connell 09/76 to 12/99
Private law practice representing individuals and businesses with emphasis on civil trial practice and corporate matters.

S. E. Johnson Companies, Inc. 01/00 to 10/03
S. E. Johnson (headquartered in Maumee), a large highway contractor/aggregate and asphalt producer in the tri-state Ohio, Michigan and Indiana region; reporting directly to the CEO/President and responsible for legal, environmental/safety and human resource departments; contract negotiation and review, supervision of risk management, claims, union grievances and litigation; member of the Board of Directors since 1993; member of senior executive management team until the sale of the Companies in May 2003.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Primarily civil defense trial practice. Major clients included Grand Trunk, nka CN North America; The Hartford; Heritage; McKesson Corp.; Motorists Insurance; Nationwide Insurance; Norfolk Western Railway Company, nka Norfolk Southern Corporation; Ohio Insurance Guaranty Association (OIGA); St. Paul; and S. E. Johnson Companies, Inc.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently from 1976-99. After my career change to in-house counsel, I appeared occasionally from 2000-03. I returned to some courtroom practice in 2004 handling discrimination, personal injury, wrongful death, contract, business, real estate and class action litigation, as well as serving as a Mediator in several construction disputes. I also devoted significant time in 2004 to my judicial campaign.

2. What percentage of these appearances was in:
   (a) federal courts: **60%**
   (b) state courts of record: **30%**
   (c) other courts: **10%**

3. What percentage of your litigation was:
   (a) civil: **98%**
   (b) criminal: **2%**

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I estimate I have tried some one hundred cases to verdict and was sole or chief counsel in eighty-five percent of those cases.

5. What percentage of these trials was:
   (a) jury: **75%**
   (b) non-jury: **25%**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

A. Sobecki v. Millard
Lucas County Case No. 85-2817 (1987)

Jury trial before Judge Melvin Resnick with verdict for plaintiffs for $1,200 where jury rejected plaintiffs' claim that auto accident aggravated multiple sclerosis. Case presented novel medical issue of causation with conflicting expert testimony. Demand was several hundred thousand dollars. I represented defendant.

Opposing counsel: **Martin Holmes, Sr.**
Schindler, Neff, Holmes, Schlageter & Mohler
300 Madison, Suite 1200
Toledo, Ohio 43604
(419) 243-6281

B. Langenderfer v. Johnson
917 F.2d 1413 (6th Cir. 1990)

Appellate court reversed jury verdict and found in favor of client (defendants) as against four plaintiffs and modified verdict for fifth plaintiff in case involving Section 2 antitrust claims in the construction industry. This was a retrial (Judge John Potter) of an earlier case where the Court adopted a legal definition for predatory pricing advanced by defendants.

Opposing counsel in both trials:

James Porter (retired)
Cuyahoga County Common Pleas Court
29475 Edgedale Road
Cleveland, Ohio 44124
(216) 464-2260

W. Jack Rekstis
Squire, Sanders & Dempsey
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
(216) 479-8500

Co-counsel on retrial:

M. Neal Rains
Frantz Ward
55 Public Square Building
19th Floor
Cleveland, Ohio 44113
(216) 515-1660

Paul Friedman
Dechert, LLP
1775 I Street, N.W.
Washington, District of Columbia 20006
(202) 261-3300

C. Osborn v. N&W
68 Ohio App.3d 85 (1990)

Summary judgment affirmed in favor of client (defendant) in wrongful death and personal injury claims brought by driver and passengers in grade crossing accident. Court found no negligence on the part of my client despite adverse expert testimony.

Opposing counsel: **Thomas Gallagher**
Williams, Jilek, Lafferty, Gallagher & Scott
416 North Erie Street
Suite 500
Toledo, Ohio 43624
(419) 241-2122

Alan Mollenkamp
Mollenkamp & Ingram
411 North Michigan Avenue
Suite 300
Toledo, Ohio 43624
(419) 244-7500

Counsel
(Co-Defendant): **Peter Casey**
Eastman & Smith
P. O. Box 10032
Toledo, Ohio 43699-0032
(419) 247-1738

D. S. E. Johnson v. Williams County Commissioners
Williams County Case No. 91-CI-72 (1991)

Bench trial before Judge Kenneth Rohrs who found in favor of client (plaintiff) on complaint for mandamus and injunctive relief requesting award of paving projects. The issue before the Court was whether the County was justified in "jumping" a lower bid.

Opposing counsel: **William Bish**
Bish, Roth, Butler & Thompson
1210 West High Street
Bryan, Ohio 43506
(419) 636-5666

E. Sun Refining & Marketing v. Crosby Valve
68 Ohio St.3d 397 (1994)

Federal District Court certified a question of state law: "Which statute of limitations applies to parties to a contract where the plaintiff is suing for property damage?" The Ohio Supreme Court ruled that, in product liability actions between sophisticated parties, the character of the loss determines the applicable statute of limitations. Claims relating to property other than the defective product are controlled by R.C. 2305.10 for personal property and R.C. 2305.09(D) for real property. Case eventually settled favorably for client (defendant).

Opposing counsel: Martin Morrissey
Mercy Health Partners
2200 Jefferson Street
Toledo, Ohio 43624
(419) 251-2801

Christopher Jones
Jones & Scheich
608 Madison Avenue
Suite 1600
Toledo, Ohio 43604
(419) 241-6450

F. Triomphe Investors v. City of Northwood
49 F.3d 198 (6th Cir. 1995), affirming 835 F. Supp 1036 (N.D. Ohio 1993)

Sixth Circuit affirmed District Court's (Judge Lawrence Zatkoff) grant of summary judgment in favor of City and its officials (clients) in claim brought by landowners based upon City's denial of a special use permit. The Court held that landowners had no property right protected by substantive due process and the zoning code vested the City with discretion even though plaintiff met minimum requirements. U.S. Supreme Court denied appeal.

Opposing counsel: Ralph DeNune
McHugh, DeNune & McCarthy
5580 Monroe Street
Sylvania, Ohio 43560
(419) 885-3597

G. Uland v. S. E. Johnson
LEXIS 6112 (Williams County 1997)

This case involved contamination of Lake Pioneer in Williams County, Ohio and a claim by the property owners around the lake against past and present commercial property owners who allegedly caused the contamination thereby damaging plaintiffs' properties. The claims were numerous and the Court (Judge Robert Franklin) awarded partial summary judgment in favor of defendants dismissing most claims. Case eventually settled favorably for client -- prior property owner, one of the defendants.

Opposing counsel (Plaintiffs):

Thomas Hayes
Goldberg, Wurster & Hays
6800 Central Avenue
Unit F-3
Toledo, Ohio 43617
(419) 843-5355

Steven Newcomer
P. O. Box 673
Perrysburg, Ohio 43551
(419) 872-2800

Counsel (Co-Defendant):

Shane Farolino
Roetzel & Andress
222 South Main Street
Akron, Ohio 44308
(330) 849-6680

Counsel (Defendants):

David Zoll
Michelle Kranz
Zoll & Kranz
6620 West Central Avenue
Suite 200
Toledo, Ohio 43617
(419) 841-9623

H. Norfolk & Western v. City of Oregon
LEXIS 14909 (6th Cir. 1998)

I represented plaintiff seeking a declaration that the City's attempt to find the railroad in violation of the local blocked crossing statute was invalid. The Court found the statute unconstitutional (preempted by federal law) and enjoined its enforcement. This Decision by Judge David Katz was eventually affirmed on appeal following a confirmation that the tracks in the railyard were not feasible for reconfiguration.

Opposing counsel: Paul Goldberg
Goldberg, Wurster & Hays
6800 Central Avenue
Unit F-3
Toledo, Ohio 43617
(419) 843-5355

I. Miller v. Norfolk & Western
LEXIS 19301 (6th Cir. 1998)

Plaintiffs brought this action for paraplegic injuries Carrie Miller sustained in a car-train collision. Miller was a passenger in a vehicle driven by her friend. The jury returned a verdict, affirmed on appeal, in favor of defendant (client). At issue on appeal were the jury instructions and the trial court rulings (Judge David Katz) which placed limitations on the testimony of plaintiffs' expert and issues of federal preemption pertaining to the train horn and lighting.

Opposing counsel: Jeffrey Leikin
Nurenberg, Plevin, Heller & McCarthy
1370 Ontario Street
Suite 100
Cleveland, Ohio 44113
(216) 621-2300

J. Rehoreg v. Stoneco, Inc.
Lorain County Case No. 04 CA 8481 (2005)

Property owners brought class action nuisance claim against client (defendant) owner of asphalt plant. Trial court (Judge Zaleski) denied class certification and later, upon plaintiffs' renewed motion asserting a new damages theory, trial court (Judge Betleski) granted certification. Appellate court held that unappealed-from prior order precluded plaintiffs from resubmitting motion to certify.

Opposing counsel: **Robert Gary**
Gary, Naegele & Theado
446 Broadway
Lorain, Ohio 44052
(440) 244-4809

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I feel strongly about the obligation to instill public confidence in the judiciary and the justice system. Because of the opportunities I have had to practice in a wide variety of courts, I have witnessed "the good, the bad and the ugly" in courtroom decorum. I have addressed issues of civility, professionalism and respect for the law in talks to professional and community groups. These talks have been well-received and resulted in invitations to address other groups. Although the image of lawyers has declined since I first began to practice law, I believe the public is generally unaware of the many contributions that lawyers make to improve not only the justice system, but also to improve the overall quality of life by their volunteer and public service efforts. I take every opportunity to educate the public about all that is good in the legal profession. In my role as state court judge, I now am able to educate the juries and I make special efforts, with my staff, to insure a positive experience for jurors and visitors to our courtroom.

I have also been active as a mediator. In private practice, I served on the Federal Court Panel of ADR Neutrals. I continued to volunteer as a mediator in disputes while serving as General Counsel. During my tenure at Fuller & Henry, I was selected to mediate several construction disputes. I also served on the Toledo Bar Association fee arbitration committee. Most recently, as a judge, I take an active role in settling cases on my docket and also have, at the request of my colleagues, assisted in settling cases on other dockets.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

There remains a potential for shareholder distribution from the sale of S. E. Johnson Companies, Inc. At the time of the sale in May 2003, escrow funds were set up which, depending upon certain events, could lead to an additional distribution to shareholders. The status of that distribution is still uncertain.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will meticulously follow the reporting required by the Ethics and Government Act. I will review incoming cases for potential conflicts and will make full disclosure of any relationships (personal, professional or financial) to the litigants which could give rise to an appearance of impropriety. My present practice is to recuse myself from cases involving Fuller & Henry (my recent law firm), S. E. Johnson (my recent employer) or St. Luke's Hospital (my wife's employer). For the large corporate clients I have represented in the past, I make full disclosure to counsel and allow them to object to my hearing the case, recusing myself if appropriate. If I am confirmed and appointed as a United States District Judge, I will continue to maintain the integrity of the judiciary. I will follow the Code of Conduct for United States Judges, applicable statutes and rules and regulations established for the federal judiciary.

3. 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.

4. 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, patents, 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.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Position - Lucas County Co-Chair for Voinovich for Senate (2000).

Role - I have hosted or co-hosted events for several local and statewide candidates over the years including Michael DeWine, Betty Montgomery, James Petro, Robert Taft, George Voinovich, Ohio Supreme Court Justices, local trial and appellate judges, state senators and representatives. I have worked with each of the Lucas County GOP Chairs dating back to the 1980's.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2003

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

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Zouhary, Jack	District Court, Northern District Ohio	12/15/05

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
District Judge - Nominee	X Nomination, Date 12/14/05 ___ Initial ___ Annual ___ Final	01/01/04 - 11/30/04

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
700 Adams Street Courtroom 8 Toledo, Ohio 43624	Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

POSITION — NAME OF ORGANIZATION/ENTITY

[X] NONE (No reportable positions.)

1 _____ _____

2 _____ _____

3 _____ _____

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

DATE — PARTIES AND TERMS

[ ] NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	2005	State of Ohio Public Employee Retirement System (PERS)
2		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

[ ] NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME
1	2005	Lucas County Common Pleas Court Judge	$ 112,700
2	2004-05	Fuller & Henry, Ltd.	$ 35,383
3	2003	S. E. Johnson Cos.	$ 1,278,600

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

[ ] NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	
1	2005	St. Luke's Hospital	Salary
2	2004	St. Luke's Hospital	Salary

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Jack Zouhary	12/15/05

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1		Exempt	$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000
P2=$5,000,001-$25,000,000 P3=25,000,001-50,000,000 P4=50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Jack Zouhary	12/15/05

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	NONE (No reportable income,									
1	DTE Energy	A	DIV	J	T	Exempt				
2	TXU Corp	A	DIV	K	T					
3	Fiserve	A	DIV	J	T					
4	Bank of New York	A	DIV	J	T					
5	McDonald Investments	C	DIV	L	T					
6	Merrill Lynch	E	DIV	N	T					
7	Five M Trust	E	DIV	O	T					
8	Five M Trust	E	RENT	N	W					
9	Charter One	B	INT	K	T					
10	Capital One	B	INT	L	T					
11	Fifth Third	E	INT	N	T					
12	Corus Bank	B	INT	L	T					
13	National Financial	A	INT	J	T					
14	McDonald Investments	C	INT	L	T					
15	Merrill Lynch	E	INT	N	T					
16	Five M Trust	D	INT	O	T					
17	Rurban Financial	A	DIV	J	T					

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Jack Zouhary	12/15/05

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
18 Fifth Third IRA	A	INT	J	T	Exempt				
19 Merrill Lynch IRA	E	DIV	O	T					
20 Hartford Life (two policies)	C	DIV	F	T					
21 Manu Life Annuity	D	DIV	M	T					
22 Reliastar	B	DIV	J	T					
23 ABA Retirement 401(k)	D	DIV	M	T					
24 Nationwide Retirement 403(B)	D	DIV	N	T					
25 US Savings Bonds	B	INT	K	T					
26									
27									
28									
29									
30									
31									
32									
33									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jack Zouhary	12/15/05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

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

Signature Jzouhary Date 12/15/05

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		747	615	Notes payable to banks-secured			
U.S. Government securities-add schedule		30	000	Notes payable to banks-unsecured			
Listed securities-add schedule	1	386	011	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		110	000				
Cash value-life insurance		185	944				
Other assets itemize:							
Retirement accounts	1	505	682				
5M Trust (one-fifth interest)	1	900	000				
				Total liabilities			0
				Net Worth	6	565	252
Total Assets	6	565	252	Total liabilities and net worth	6	565	252
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 30,000
Listed Securities	
McDonald Brokerage	$ 176,006
Merrill Lynch Brokerage	1,161,681
TXU	26,824
Rurban	11,000
DTE	10,500
Total Listed Securities	1,386,011
Real Estate Owned	
Personal residence	$ 700,000

* My spouse owns a one-fifth interest in a family Trust consisting of brokerage accounts, bank accounts, certificates of deposit and a fifty percent ownership in three commercial properties in Greenville, Ohio.

III. GENERAL (PUBLIC)

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

Over the years, I have provided pro bono services in the area of will preparation, traffic matters and contract review. I provided free legal advice to S. E. Johnson employees on personal or family matters; Ladyfield School and Notre Dame Academy when serving on school boards and committees; and the Corey Woods Homeowners Association when serving on its Board. My largest pro bono service (over one hundred hours) was handling a will contest on behalf of St. Elias Church where I was able to successfully negotiate a settlement resulting in a $100,000 increase in the bequest. Co-defendants included other churches who also obtained increased bequests. My work on this matter included document production and review, witness interviews, deposition testimony, court appearances and settlement conferences.

From early adulthood, when I was a Big Brother, until the present, my volunteer commitment has been focused on students and education. I think I held every title imaginable at my children's grade school from room rep, coach, field trip chaperone to President of the parent organization. After my children graduated from grade school, I remained active in the school as a Junior Achievement presenter. I was able to bring my legal and business perspective to junior high students in presentations ranging from job interviews and career options to the stock market and personal finances. I was an active volunteer at my children's high school where I was asked to serve on the Principal Search Committee and as a co-chair of the recent Capital Campaign. I continue to judge area high school forensic competitions. Most recently, I met weekly with a family from Liberia through the Chicago Interfaith Youth Corp helping nine-year-old Josiah adjust to life in Toledo and being a "big brother".

Our family served as volunteers at St. Pat's Soup Kitchen when our two daughters were young until they graduated from high school. I have been an active volunteer in my church serving in numerous capacities for over twenty-five years including Parish Council, Church School teacher and Director, choir, and recently completed a term as Chairman of the Endowment Fund. In addition, my volunteer efforts through the Toledo Rotary Club include projects such as Partners in Education and other community service ranging from Red Cross to Salvation Army.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

In college, I was a member of Psi Upsilon Fraternity (Zeta Chapter) which limited membership to males.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, the process began with the completion of a Questionnaire in January 2005. This was followed by three interviews: February 2005 in Toledo before a statewide advisory group of lawyers; March 2005 with Senator Mike DeWine; and April 2005 in Columbus for a second interview with the statewide group.

Both Ohio Senators received supporting letters from, and their Staff made telephone calls to, personal and professional acquaintances.

Later I interviewed with the Office of White House Counsel and the Department of Justice. A background investigation was performed by the FBI after which I was informed by the President's staff that he was formally nominating me to this position.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judicial activism is a problem to be avoided. I understand a judicial activist to be a judge who exceeds the purpose and authority of the judiciary.

The role of the judiciary is to interpret the law, not to legislate. For example, it is not for the judge to strike down a law because he or she disagrees with it, but only if it is unconstitutional. It is for the elected legislators to set a policy agenda and to pass laws that further that agenda. The judiciary's role was never meant to rewrite what the legislature has done or to make broad policy determinations. Rather, cases are to be decided based on their specific facts after meeting certain threshold requirements, such as jurisdiction and standing. Such an approach permits responsible resolution of the particular dispute between the parties.

For a judge to avoid judicial activism, he or she must keep in mind that each branch of government has limited authority, as intended by our forefathers, with each branch serving as a check and balance on the others. I am keenly aware of the importance of *stare decisis,* and that litigants are entitled to rely on legal precedents in governing their conduct and evaluating their cases. As a trial judge, I view my role as one of applying the law, not making the law, again a reflection of the separate branches of government. A judge should defer, not usurp; interpret statutes by examining the "four corners of the document" without regard to personal preferences about what the law should be; resolve fairly the issue at hand without imposing on other individuals and institutions; and seek consistent jurisprudence as opposed to case-by-case "detours". By exercising judicial restraint, the courts can meet their promise of fairness, impartiality and the pursuit of justice.

AFFIDAVIT

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

Date: December 15, 2005

Jack Zouhary

Notary Public

NANCY L. SNIEGOCKI
Notary Public - State of Ohio
My Commission Expires Feb. 2, 2008

Senator DEWINE. Thank you, Judge, very much.
Mr. Clark, welcome.

STATEMENT OF JOHN F. CLARK, NOMINEE TO BE DIRECTOR, UNITED STATES MARSHALS SERVICE

Mr. CLARK. Thank you, Mr. Chairman, Senator Feinstein. I am very honored to appear before the Committee as the President's nominee to serve as Director of the United States Marshals Service.

I also wanted to thank the Attorney General and the President for the confidence they have placed in me, and it was also an additional honor to have both Senators Warner and Allen appear this morning to express their confidence in me in supporting me.

As a career employee of the Marshals Service, nearly 23 years, I can say without a doubt this is one of the most honorable things I have had to do in my career. So I look forward to answering your questions.

Although my wife, Lucy, has been introduced, I would also like to thank her, my wife of 17 years, Lucy, for being with me today and to also be the captain of my support team.

Thank you. I look forward to answering your questions.

[The biographical information of Mr. Clark follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   John Francis Clark

2. Address: List current place of residence and office address(es).

3. Home: Oak Hill, VA 20171 Office: 1735 Jefferson Davis Hwy. Arlington, VA 22202

4. Date and place of birth.

   June 21, 1960 (Malone, New York)

5. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address.

   I am married to Lucia (Costanzo) Clark who is employed as a Management Analyst for the Joint Programs Office, 12801 Fair Lakes Parkway, Fairfax, VA 22033.

6. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   1. Syracuse University, 1999 – present, Master of Social Science, (degree in progress)
   2. Syracuse University, 1995 – 1997, Bachelor of Science, degree awarded 1997
   3. Northern Virginia Community College, 1996 – 1997, no degree awarded
   4. Prince Georges Community College, 1983, no degree awarded
   5. University of Maryland, 1982, no degree awarded
   6. Hudson Valley Community College, 1978 – 1980, Associate in Applied Science, degree awarded 1980

7. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   Since graduating from college, I have been employed in the following manner:

July 2005 – present: Acting Director, United States Marshals Service, Headquarters, Arlington, Virginia

2002 – July 2005: United States Marshal for the Eastern District of Virginia, Alexandria, Virginia (appointed by President George W. Bush)

1999 – 2002: Acting United States Marshal for the Eastern District of Virginia, Alexandria, Virginia

1997- 1999: Chief Deputy U.S. Marshal (Supervisory Criminal Investigator) for the Eastern District of Virginia, Alexandria, Virginia

1996 – 1997: Chief Inspector (Supervisory Criminal Investigator), Office of Internal Affairs, U.S. Marshals Service Headquarters, Arlington, Virginia

1992 – 1996: Chief Inspector (Supervisory Criminal Investigator), International Fugitive Operations, U.S. Marshals Service Headquarters, Arlington, Virginia

1990 – 1992: Supervisory Inspector (Supervisory Criminal Investigator), Office of Internal Affairs, U.S. Marshals Service Headquarters, Arlington, Virginia

1986 – 1990: Inspector, Fugitive Squad, U.S. Marshals Service, Eastern District of Virginia, Alexandria, Virginia

1983 – 1986: Deputy U.S. Marshal, U.S. Marshals Service, Northern District of California, San Francisco/San Jose, California

1981 – 1983: Police Officer, U.S. Capitol Police, Washington, DC

1980 – 1981: Patrol Agent, U.S. Border Patrol, Marfa, Texas

In addition, I have served on the Board of Elders for Community Bible Church (a non-profit organization) from 1997 to present. I do not receive any compensation for this position.

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee:

During the course of my career, I have received numerous honors and awards for exceptional work performance to include formal letters of commendation, Sustained Superior Performance awards and the Attorney General's Award for Outstanding Assistance to Disabled Employees.

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

None/Not applicable

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to the following organizations that lobby before public bodies:

1. International Association of Chiefs of Police
2. Federal Law Enforcement Officer's Association
3. Virginia Association of Chiefs of Police

Other organizations to which I belong:

1. Virginia Gang Investigator's Association
2. Wintergreen Nature Foundation
3. Liaison Officer's Association [foreign police]
4. Chateaugay Fish and Game Club
5. Community Bible Church
6. Oakton Chase Homeowner's Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any in such memberships lapsed. Please explain the reason for any lapses of membership. Give the same information for administrative bodies which require special admission to practice.

None.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to

the Committee. Also, please supply a copy of all speeches by you on issues of constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I published a magazine article in the August 2005 addition of Police Chief magazine on the topic of Fugitive Task Force Operations. During April 2005, I testified before the House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security regarding H.R. 1751. I have not published any books, other articles, reports or other material. On occasion, I delivered speeches on a variety of law enforcement topics, however, no notes or copies of the speeches were kept.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in excellent health with no current injuries or illnesses. My last physical exam was conducted on 8-16-04.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

On August 1, 2005, I was designated by President George W. Bush to serve as the Acting Director of the United States Marshals Service. I was appointed by President George W. Bush to serve as the United States Marshal for the Eastern District of Virginia on November 15, 2002 for a term of 4 years. I have never held any other public office or been a candidate for elective public office.

15. Legal Career:

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

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

Not applicable

2. whether you practice alone, and if so, the addresses and dates;

Not applicable

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

August 2005 – present: Acting Director, United States Marshals Service, 1735 Jefferson Davis Highway, Arlington, Virginia 22202

2002 – July 2005: United States Marshal for the Eastern District of Virginia, 401 Courthouse Square, Alexandria, Virginia, 22314

1999 – 2002: Acting United States Marshal for the Eastern District of Virginia, 401 Courthouse Square, Alexandria, Virginia, 22314

1997- 1999: Chief Deputy U.S. Marshal for the Eastern District of Virginia, 401 Courthouse Square, Alexandria, Virginia, 22314

1996 – 1997: Chief Inspector (Supervisory Criminal Investigator), Office of Internal Affairs, U.S. Marshals Service Headquarters, 1735 Jefferson Davis Highway, Arlington, Virginia, 22202

1992 – 1996: Chief Inspector (Supervisory Criminal Investigator), International Fugitive Operations, U.S. Marshals Service Headquarters, 600 Army Navy Drive, Arlington, Virginia, 22202

1990 – 1992: Supervisory Inspector (Supervisory Criminal Investigator), Office of Internal Affairs, U.S. Marshals Service Headquarters, 600 Army Navy Drive, Arlington, Virginia, 22202

1986 – 1990: Inspector (Criminal Investigator), Fugitive Squad, U.S, Marshals Service, Eastern District of Virginia, 1000 East Main Street, Richmond, Virginia, 23219 and 200 South Washington Street, Alexandria, Virginia 22314

1983 – 1986: Deputy U.S. Marshal, U.S. Marshals Service, Northern District of California, 280 South First Street, San Jose, California 95113 and 450 Golden Gate Avenue, San Francisco, California 94102

1981 – 1983: Police Officer, U.S. Capitol Police, 119 D Street, NE, Washington, DC 20510

1980 – 1981: Patrol Agent, U.S. Border Patrol, 300 Madrid Street, Marfa, Texas 79483

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Not applicable

2. Describe your typical former clients, and mention areas, if any, in which you have specialized.

Not applicable

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Not applicable

2. What percentage of these appearances was in:

a. federal court;
b. state courts of record;
c. other courts.

Not applicable

3. What percentage of your litigation was:

a. civil;
b. criminal.

Not applicable

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel or associate counsel.

Not applicable

5. What percentage of these trials was:

a. jury
b. non-jury.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and the date 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.

Below are the names and telephone numbers of 10 individuals who can attest to my professional and public life:

1. Honorable James R. Spencer, Chief United States District Judge, Eastern District of Virginia (804-916-2250)

2. Honorable Henry E. Hudson, United States District Judge, Eastern District of Virginia (804-916-2290)

3. Honorable Paul J. McNulty, United States Attorney, Eastern District of Virginia (703-299-3700)

4. Honorable Gerald Bruce Lee, United States District Judge, Eastern District of Virginia (703-299-2117)

5. Honorable John W. Marshall, Secretary of Public Safety, Commonwealth of Virginia (804-786-5351)

6. Joseph W. Trindal, Regional Director, National Capital Region, U.S. Department of Homeland Security (202-690-9632)

7. Charlie T. Deane, Chief of Police, Prince William County (Virginia) Police Department (703-792-6652)

8. Robert H. Banks, Jr., Chief Inspector, United States Marshals Service (Ret.) (301-596-4736)

9. John R. Hackman, Chief Deputy U.S. Marshal, Eastern District of Virginia (757-963-5990)

10. Mary M. Doherty, Assistant Chief Deputy U.S. Marshal, Eastern District of Virginia (703-837-5542)

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I am a 23-year veteran of the United States Marshals Service (USMS) and I have served in a variety of positions within the USMS from Deputy Marshal to appointment by the President as the United States Marshal for the Eastern District of Virginia. During my career, I have served in field offices, both large and small) where I performed all the typical duties of a Deputy Marshal. In addition, I served over 7 years of duty at the USMS Headquarters where I managed national programs and supervised numerous projects and people in some of the most demanding mission areas, to include Chief Inspector of the Internal Affairs Division and Chief Inspector of the International [fugitive] Investigations Division.

I have extensive experience in the Judicial Security mission area of the USMS. Since 9/11, I have been directly responsible for security planning for some of our nation's most sensitive terrorist prosecutions, such as Zacharias Moussaoui, John Walker Lindh and the "Virginia Jihad" to name a few. Based on my experience and knowledge in this area, I have conducted numerous training sessions and seminars on this topic to include organizations such as the National Sheriff's Association.

My experience in fugitive investigations is broad and deep. For example, I was instrumental in helping secure congressional funding for the Regional Fugitive Task Force which is now in full operation within the Eastern District of Virginia. I have conducted hundreds of investigations as a Deputy Marshal to include locating and arresting individuals for violent crimes, both domestically and internationally. I have served in nearly every program area within the Investigative Services Division.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you made to be compensated in the future for any financial or business interest.

   I will receive deferred income (currently valued at $102,950) accumulated in the U.S. government "Thrift Savings Plan" payable upon my retirement (on or after June 2010). I do not have any other deferred income arrangements or other future benefits which I expect to derive from my employment or other sources or individuals to include any future financial or business interests.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   In the event any potential conflicts of interest arise during my appointment, I will immediately seek counsel and advice from the Department of Justice, Office of Ethics.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No.

   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, patents, 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 SF-278)

4. Please complete the attached financial net worth statement in detail (add schedules as called for).

   (see attached financial net worth statement and required schedules)

5. Have you ever held a position of played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

III. GENERAL (PUBLIC)

1. 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.

   Although I am not an attorney, I have given and continue to give considerable time to serving those who are disadvantaged. As a member of Community Bible Church, I have participated in various community service projects, directly and indirectly, in which we assisted disadvantaged residents of West Virginia through short-term mission trips. The mission trips were organized to assist elderly and low-income residents who need home repair, yard clean-up or other humanitarian services. I have also annually participated in the "Prison Ministries" program that provides Christmas gifts to children who have a parent incarcerated in prison. During my service in this program, I assisted in delivering gifts, purchased by myself and other church members, to children in the greater Washington, DC area.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies.

   I do not now belong or have I ever belonged to any organization which discriminates on the basis of race, sex or religion either through formal membership requirements or the practical implementation of membership policies.

U.S. Department of Justice

Washington, D.C. 20530

OCT 25 2005

Marilyn Glynn
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of John Clark, who has been nominated by the President to serve as Director, United States Marshals Service, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Mr. Clark recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute, has a financial interest. Mr. Clark has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

We have advised Mr. Clark that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date *(If Applicable) (Month, Day, Year)*

	Last Name	First Name and Middle Initial
Reporting Individual's Name	CLARK	JOHN F
Position for Which Filing	Title of Position	Department or Agency *(If Applicable)*
	DIRECTOR	DOJ, U.S. MARSHALS SERVICE
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*	Telephone No. *(Include Area Code)*
	401 COURTHOUSE SQUARE, ALEXANDRIA, VA 22314	703-837-5519
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held United States Marshal, Eastern District of Virginia (11/02 to present)	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Committee on Judiciary	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	John F. Clark	6-20-05
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
	Jane M. Dodge	10-25-05
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	RJC	10-25-05
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A–The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B–Not applicable.

Schedule C, Part I (Liabilities)–The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)–Show any agreements or arrangements as of the date of filing.

Schedule D–The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only
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Reporting Individual's Name	SCHEDULE A	Page Number
CLARK, JOHN F		2 of 8

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

		Valuation of Assets (BLOCK B)															Type (BLOCK C)				Amount (BLOCK C)													
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria
Examples	Central Airlines Common				x												x						x											
	Doe Jones & Smith, Hometown, State			x																													Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x									x											
	IRA: Heartland 500 Index Fund							x						x										x										
1	American Century Government Bond Fund		x											x								x											
2	American Century Heritage Fund		x											x								x											
3	American Century Ultra Fund		x											x								x											
4	Time Warner (stock)		x														x					x											
5	Bell South (stock)		x														x					x											
6	BMC Software (stock)		x														x					x											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
BLOCK A	BLOCK B															BLOCK C																
																Type				Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Cisco Systems (stock)			x													x						x									
2 Davis New York Venture Fund		x											x								x									
3 Davis Opportunity Class A Fund		x											x								x									
4 Dominion Resources (stock)		x														x					x										
5 Dreyfus Stock Index Fund		x											x								x									
6 Duke Power (stock)		x														x					x										
7 Exxon/Mobil (stock)		x														x					x										
8 Gabelli Asset Fund		x											x								x									
9 Intel Corp. (stock)		x														x					x										

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
CLARK, JOHN F		4 of 8

Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																					
BLOCK A	BLOCK B															BLOCK C																					
																Type				Amount																	
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 U.S. Savings Bonds		X																X				X													
2 SBC Communications (stock)		X														X					X														
3 T. Rowe Price New Asia Fund		X											X								X														
4 T. Rowe Price VA Tax-Free Bond Fund		X											X								X														
5 Verizon (stock)		X														X					X														
6 Suntrust Bank Checking/Savings Account			X															X			X														
7 Schlumberger Limited (stock)		X														X					X														
8 Dreyfus Stock Index Fund (Nationwide Ins.)		X											X								X														
9 Dreyfus GVIT Midcap Fund (Nationwide Ins.)	X												X								X														

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B															BLOCK C																
																Type				Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Gartmore Money Market Fund (Nationwide)	x												x								x										
2 (The below funds part of Nationwide)																																
3 Dreyfus Invest. Small Cap Stock Index Portfolio		x											x							x											
4 Fidelity VIP-II Investment Grade Bond Portfolio		x											x							x											
5 Van Kampen UIF U.S. Real Estate Portfolio		x											x							x											
6 American Century VP Inflation Protection Fund		x											x							x											
7 American Century VP International Fund III		x											x							x											
8																																
9																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
CLARK, JOHN F		6 of 8

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x										
1																		
2																		
3																		
4																		
5																		

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)									
					$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples: First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					x						
1															
2															
3															
4															
5															

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [x]

Status and Terms of any Agreement or Arrangement	Parties	Date
Example: Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1		
2		
3		
4		
5		
6		

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Reporting Individual's Name	SCHEDULE D	Page Number
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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None [x]

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None [x]

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	30,000	Notes payable to banks-secured	0.00
U.S. Government Securities -add schedule	0.00	Notes payable to banks unsecured	0.00
Listed Securities-add schedule	185,834	Notes payable to relatives	0.00
Unlisted securities-add schedule	0.00	Notes payable to others	1,000 (car)
Accounts and notes receivable	0.00	Accounts and bills due	1,500
Due from relatives and friends	4,200	Unpaid income tax	0.00
Due from others	0.00	Other unpaid income and interest	0.00
Doubtful	0.00	Real estate mortgages payable-add schedule	195,693
Real estate owned-add schedule	1,355,000	Chattel mortgages and other liens payable	0.00
Real estate mortgages receivable	0.00	Other debts-itemize	0.00
Autos and other personal property	150,000		
Cash value-life insurance	200,000		
Other assets itemize			
Thrift Savings (401K) (joint)	315,000		
U.S. Savings Bonds	15,000		
		Total liabilities	196,693
		Net Worth	2,255,034
Total Assets	2,255,034	Total net worth	2,058,341
CONTINGENT LIABILITIES		GENERAL INFORMATION	

As endorser, comaker or guarantor	none	Are any assets pledged? (Add schedule)	No
On leases or contracts	None	Are you defendant in any suits or legal actions?	No
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	None		
Other special debt	None		

LISTED SECURITIES SCHEDULE

Security Name	Current Value (9/05)
American Century Government Fund	7,640
American Century Heritage Fund	13,400
American Century Ultra Fund	12,450
Time Warner Stock	3,650
Bell South Stock	5,370
BMC Software Stock	1,700
CISCO Systems Stock	17,460
Davis New York Venture Fund	12,870
Davis Growth and Opportunity Fund	6,750
Dominion Resources Stock	5,960
Dreyfus Stock Index Fund	2,244
Dreyfus GVIT Midcap Fund	2,502
Duke Power Stock	7,450
Exxon/Mobil Stock	6,116
Gabelli Asset Fund	5,200
Intel Corp. Stock	10,970
SBC Communication Stock	5,380
Schlumberger Limited Stock	9,025
T. Rowe Price New Asia Fund	6,878
T. Rowe Price VA Bond Fund	21,995
Verizon Stock	6,270
Gartmore Money Market Fund	1,938
Dreyfus Invest. Small Cap Index Fund	1,192
Fidelity VIP-II Investment Grade Bond Fund	3,674
Van Kampen UIF U.S. Real Estate Fund	1,840
American Century VP Inflation Protection Fund	2,440
American Century VP International Fund III	3,470
TOTAL:	$185,834

Senator DEWINE. Before I get started, I have letters of support from Congressmen Sessions and Boozman which will be entered into the record at this point.

Judge Zouhary, let me start with you. You are in the middle. We will just start with you. You have been a frequent lecturer on the topic of civility in the practice of law. How did you get into this area, and what does that mean, actually?

Judge ZOUHARY. I got into it because the practice of law changed from the time I first started, and when I first started, there were no special rules on civility and professionalism. But for whatever reason, that tended to deteriorate, and I think it is perhaps reflective not just of our judicial system, but perhaps society as a whole.

In any event, it was a topic of concern to me as a practicing trial lawyer who has spent a number of years working in different courtrooms with different judges. I noted different temperaments, different attitudes, and I believed it important that we return a bit more of the professionalism to our profession that had perhaps been lacking.

So I began to speak, and one talk led to another and another invitation, and now I use it not only with lawyers, but also with civic groups as well, in attempt to reverse, and I think somewhat successfully, the trend that—

Senator DEWINE. What kind of reaction do you get?

Judge ZOUHARY. Positive reaction, a very positive reaction from both lawyers and again from those civic groups that I have spoken with.

Senator DEWINE. Does that reflect in your work on the bench?

Judge ZOUHARY. I, of course, take that with me to the bench, and in my courtroom strive to maintain the highest of those standards of civility and professionalism. I find that one can be an advocate, which I was for many years, and yet maintain a professional decorum. It does not have to reduce it to the lowest level, and so in my courtroom, I am—I think a judge's role is to be fair and firm, maintain a professional atmosphere.

I have found that when tension—and there are times when it does get tense. Humor can be a great way to de-fuse the situation and allow the parties to resume a professional decorum. And I have had jurors, frankly, thank me for my efforts in keeping trials moving and keeping them on a professional level.

Senator DEWINE. Judge, you did some mediation work on the Federal Court Panel of Alternative Dispute Resolution. How did you get involved in that and what has that taught you and what impact has that had on your work as a Common Pleas judge, and what impact might that have in your role if you are confirmed by the U.S. Senate, if you go to the Federal district court?

Judge ZOUHARY. Thank you. That panel, when it was started—and I forget the year—began because there was a perceived need because of the clog in the docket—a way to help move cases. And they asked for volunteers and I volunteered and was one of a group that was instructed and then became a mediator, where you are assigned cases.

And it is a quasi-judicial role in the sense that you take on that case and try to resolve it. So I was able to shed my advocate hat and put on a neutral or mediator hat and help with cases to allevi-

ate the docket of Federal judges, frankly, that were becoming pretty overburdened. I have taken that on and have done some private mediator.

And as a judge now, I take a proactive role and am actively engaged in settlement conferences, and try to use that mediator role to again resolve those cases that the parties are willing to resolve, realizing that there are some cases that need to be tried. And that is what we are as trial judges; we are there to try cases, as well, but I find it is a great way to help move cases and to keep the docket moving, yet giving each case the attention it deserves.

Senator DEWINE. Judge, you have spent most of your career not on the bench. In other words, you have had—I gave your introduction, but a rather interesting career, some of it in the private practice of law, some of it in corporate life, and only recently on the bench.

Why do you want to be a Federal judge?

Judge ZOUHARY. Well, I want to take the experience of the many courtrooms, which I viewed as my classrooms as a trial lawyer, and also now my own classroom our courtroom as a State court judge—take those experiences to help improve the judicial system.

And there are a few things that one can do as a Federal judge that one cannot do as a State judge. I believe the cases are more challenging in Federal court. I would also like to expand the audience for my civility and professionalism talk. And, finally, something very dear to me is the opportunity to preside over immigration ceremonies, which a Federal judge can do.

As a first-generation American who grew up with a number of immigrants, hard-working immigrants, a number of whom were part of what some have called the greatest generation, they greatly inspired me and it would be quite an honor for me to have the opportunity to welcome new citizens to this country.

Senator DEWINE. Judge Larson, let me kind of followup with you on that question. You have served as a magistrate judge now for, what, 5 years, I guess?

Judge LARSON. Five years.

Senator DEWINE. Explain the duties of that office and how you think it has prepared you to serve as a district court judge, and then maybe kind of tell me why you want to be a district court judge.

Judge LARSON. Well, thank you, Senator. I have thoroughly enjoyed these last 5 years as a magistrate judge. It has been a real privilege to serve the people of the Central District in that capacity.

As a magistrate judge, I have both civil and criminal responsibilities. The criminal cases are misdemeanor cases, as opposed to the felony cases that a Federal district judge would have. And on the civil side, I have actually been fortunate to have been involved in a pilot project these last 2 years which has placed me on the wheel along with the two other active district judges in the Eastern Division of our Central District. Of course, the parties must consent to a magistrate judge before the case proceeds, but it has provided me an opportunity to have a wide range of civil cases, civil trials. And I think all of that experience together has well prepared me for the opportunity to be a district judge.

It has also engendered in me the desire to become a district judge. I have thoroughly enjoyed the civil caseload. I spent 9 years in the U.S. Attorney's office doing mostly felony criminal work, and I look forward to being able to have an opportunity to do that if I were to be confirmed.

I love being a judge. I love the role of the judiciary. I think the judiciary has a very important role to play in our society, and so that is why I want to be a district judge.

Senator DEWINE. Judge, I was intrigued by reading that you have traveled extensively in Eastern Europe. You have spoken to foreign audiences about criminal justice and the rule of law.

How did you get into doing that and what have you learned from that? Just tell us a little bit about that experience. I think that is kind of an interesting background to bring to the Federal bench.

Judge LARSON. Well, when I was in the U.S. Attorney's office in Los Angeles, I was assigned to the organized crime strike force that Senator Feinstein made reference to. And at that time, we were having—it was shortly after the fall of the Soviet Union and we were having a large influx of organized crime elements from that part of the world—Brighton Beach, in New York, places in Los Angeles, a few other major metropolitan cities.

So the Justice Department decided to indicate an individual who would be the Russian organized crime coordinator for each judicial district in which there was this activity, or believed to be this activity. I was selected probably largely because I knew a little bit about Russia. I had studied Russian language and culture and history at Georgetown University.

And, of course, if you know a little bit about something, all of a sudden you are the expert in the area. And since no one else stepped forward, I was assigned to do that, and it was a tremendous opportunity. I was able to work on a lot of cases with colleagues from overseas, and as part of that I also had a chance to go over on behalf of the Justice Department to speak at conferences which were designed to try to spread the rule of law.

From that experience, I developed a tremendous appreciation for the importance of the rule of law. I saw firsthand and heard firsthand accounts of what it was like to live in a totalitarian society in which the rule of individuals or the rule of an individual party was substituted for the rule of law.

I spoke to judges who held that role under the communist system and who were now struggling to develop a judicial system very much modeled after many Western countries, and the challenges that they were facing. And in trying to provide some assistance or insight on our effort, it gave me a renewed appreciation for what a valuable system we have here, a renewed appreciation and commitment on my part to the rule of law.

Senator DEWINE. Judge, you have spent practically your entire career working daily in the Federal courthouse as a prosecutor and magistrate judge. You certainly must know the Central District of California's caseload quite well. What do you think are the unique challenges of that particular court? You have kind of sized it up, I am sure.

Judge LARSON. That is kind of the obvious one, is the size. It is a huge judicial district. There are approximately 18 million people

in the Central District, which I believe makes it the largest judicial district in the country by population. We have currently, I believe, 28 active district judges, 23 magistrate judges. And so the first challenge is just dealing with the sheer volume, both in terms of the number of cases, the population, the size of the district. It is quite large. So that is probably our biggest challenge.

We also have the challenges that are presented, I suppose, by having a very diverse population. While that is very rewarding and it is a great asset for Southern California, it raises a whole panoply of different issues that find their way in one form or another into Federal court.

Senator DEWINE. Let me ask both of you, Judge Larson and Judge Zouhary, a question we ask all nominees. Supreme Court and Federal circuit court precedents are binding on district courts, as you know. Are you committed and willing to follow the precedents of the higher courts faithfully and give them full force and effect even if you might personally disagree with those precedents?

Judge Zouhary?

Judge ZOUHARY. Yes.

Senator DEWINE. Judge Larson?

Judge LARSON. Yes.

Senator DEWINE. Mr. Clark, what do you think is the biggest challenge facing the Marshals Service?

Mr. CLARK. I seem to be having a little feedback here with this microphone, but—

Senator DEWINE. Technical problems.

Mr. CLARK. Technical problems, yes.

Senator DEWINE. The biggest challenge today.

Mr. CLARK. That could be the first challenge from Capitol Hill, yes.

Thank you, Chairman. There are a number of challenges, I think, that face the Marshals Service. And as you know from our history, and as Senators Warner and Allen explained, we have a rather unique series of missions we perform, be it detaining nearly 55,000 inmates around the country in various regional or local jails; protecting Federal witnesses; apprehending fugitives, which last year, with our State and local Federal partners, arrested nearly 89,000 nationally.

But one of the greatest challenges that I have faced since becoming the Acting Director—and it is one that I believe the two gentlemen sitting with me here today can appreciate—is that of judicial security. We are at a point in our history where the challenges from terrorism, other individuals who have attacked members of the judiciary, have required us to rethink our strategies and our game plan, if you will, on how we will do our judicial security mission. So to me, one of the first and foremost challenges I have faced is providing first-class, superior protection to the members of our judiciary.

Senator DEWINE. Without compromising security or discussing any details about security, which you are obviously not going to do, what changes have been made, Mr. Clark, since the recent tragedy regarding the tragic murder of Judge Lefkow's husband and mother? It concerns us all. What are you doing differently?

Mr. CLARK. Sure. Mr. Chairman, soon after I was appointed as the Acting Director of the Marshals Service, I realized that we needed to look at all the various strategies, the types of things we do to protect the Federal judiciary, and looking at how we are doing it now compared to the days where we had used, I would say, strategies that could be in need of improvement.

A couple of the areas that I immediately sought to improve is how we collect and analyze threats and the intelligence on those threats, the analysis of those threats. I immediately formed a working group to look at how we can do that better. I put a rather fast time line on this working group to recommend to me how we can make some significant improvements to doing the threat analysis and the threat intelligence process following the tragedy that happened in the Judge Lefkow situation, which, as you know, required a lot of additional investigation on the threat and the threatener in that case.

They returned to me a number of recommendations. Just to share one or two of them with you, for example, I am in the process of formulating a 24/7 threat analysis center at our headquarters. I believe this will provide not only to the judiciary, but to our field offices around the country in our 94 judicial districts real-time analysis of threats that come in so that we can respond to them quickly and thoroughly.

Additionally, I asked a separate working group to look at how we can explore the use of technology to provide electronic observation of judges' residences, such as in the Judge Lefkow situation, if we need to do protective details. This particular working group also made some very good recommendations as to how we can improve our technology and the use of technology to protect the judiciary.

Senator DEWINE. Well, I appreciate that. As you know, the Judiciary Committee held an oversight hearing entitled "Protecting the Judiciary at Home and in the Courthouse." That was held on May 18, 2005. Judge Roth testified at that time that the U.S. Marshals Service fails to adequately consult and coordinate with the Federal judiciary regarding judicial security.

I wonder if you can react to that at this point. What has the Marshals Service done to address those specific concerns?

Mr. CLARK. Yes, Mr. Chairman. Soon after I assumed the duties of the Acting Director of the Marshals Service, one of my very first meetings with members of the judiciary concerned working with the Administrative Office of the U.S. Courts and a number of the Committee members on the national Judicial Conference's Committee on Judicial Security. I met with them specifically to discuss this very issue about how I can personally improve the coordination and the collaboration with the members not only of the judiciary, but of the Administrative Office of the U.S. Courts.

I also should note the two working groups that I mentioned a few minutes ago—I invited, and received great response from the Administrative Office of the U.S. Courts, to serve as Committee members on those two working groups. Most recently, I went to Tucson, Arizona, to meet with the Judicial Security Committee. I outlined for them a number of the recommendations that I intend to take, should I be confirmed by this Committee, to improve the cooperation and collaboration with the courts.

Senator DEWINE. So your pledge to this Committee is that one of your priorities will be very excellent communication with the judges, then?

Mr. CLARK. That is certainly my pledge.

Senator DEWINE. They are obviously part of your main constituency.

Mr. CLARK. Very much. That is certainly my pledge, Mr. Chairman.

Senator DEWINE. Following that May hearing, then-Director Reyna received a series of written followup questions from Committee members. I believe, to my knowledge, at least, these questions were never answered by the Director at that time and remain unanswered. Can you check into that and see if we could get answers to those questions? And if you don't have them, we can supply them to you.

Mr. CLARK. We do have them and we are working on getting them answered, having received them after I assumed the—

Senator DEWINE. I understand you didn't—

Mr. CLARK. Yes, sir. Yes, Chairman, we are working on them.

Senator DEWINE. We would appreciate that.

Mr. CLARK. Sure.

Senator DEWINE. Let me go back to these tragic murders. Congress passed an emergency supplemental appropriations bill which was signed into law in May of 2005. It specifically $11.9 million to the Marshals Service for increased judicial security outside of courthouse facilities. That funding specified priority consideration of home intrusion detection systems in the homes of Federal judges.

To my knowledge, none of the money has yet been used on home intrusion detection systems. Is that correct?

Mr. CLARK. Well, not entirely, Mr. Chairman. We have recently begun the implementation—

Senator DEWINE. You have begun to do that now?

Mr. CLARK. Correct. Just within recent months after I assumed the acting directorship, I began working on allocating and using the funds to install the home intrusion alarms.

Senator DEWINE. It is my understanding that the U.S. Marshals Service is not currently statutorily charged with protecting the United States Tax Court. Is that your understanding?

Mr. CLARK. That is correct, Mr. Chairman.

Senator DEWINE. This court is often in relatively unsecured locations, and I think we all can imagine that it might be subject to some problems and there might be some security problems.

What is your opinion about the possibility of Congress adding the Tax Court to your jurisdiction?

Mr. CLARK. Well, Mr. Chairman, we, as you know, now have about 2,200 judges nationally that we are in charge of protecting, as well as approximately 5,500 U.S. Attorneys.

Senator DEWINE. I know you probably want some money to do it.

Mr. CLARK. Yes, I would be concerned about the resources.

Senator DEWINE. You want some resources, but if we gave you the resources, could you deal with that?

Mr. CLARK. Mr. Chairman, the judges certainly deserve the best protection that we can give them and we would react appropriately to any legislation that would require us to take on those additional duties, as you noted, with the right resources.

Senator DEWINE. Talk to me a little bit, Mr. Clark, about apprehension of fugitives. We have noticed some innovative programs in Ohio recently by the Marshal there, and I wonder if you could just talk about where you see that going. It seems that this is an area where boldness and innovation can bring about some fairly dramatic results.

Mr. CLARK. Sure. Mr. Chairman, the Marshals Service, as you have noted, has a longstanding history of apprehending dangerous fugitives, lowering violent crime. And as you pointed out as well, one of our, I think, very innovative, excellent fugitive apprehension projects has come forth from your particular State.

Senator DEWINE. We are kind of proud of that.

Mr. CLARK. Well, I just recently was—

Senator DEWINE. Not that I did anything about it, but you all did, and we are proud you did it.

Mr. CLARK. Well, thank you, thank you. The particular program you are referring to, Operation Safe Surrender, allows fugitives to surrender to community clergy as a way to have a sort of a neutral site, if you will, for a fugitive to surrender. That softens, if you will, sort of the law enforcement response that sometimes comes with the apprehension of fugitives.

It also, as we noted in that particular instance, resulted in about 850 fugitives turning themselves in. Very remarkable to say it even went beyond our target goals and desired thinking that that many fugitives would turn themselves in. So we were delighted with the results.

I am pleased to report to the Committee that since I have served as Acting Director, I have approved an additional eight cities around the country that have a particularly high violent crime ratio where we hope to utilize this program that originated from Ohio to be very effective.

Senator DEWINE. Well, I want to again commend you for that program. From what we have seen in Ohio, it looks to be a very effective program. That type of innovation and kind of thinking outside the box seems to make a lot of sense and it seems to work very, very well.

Mr. CLARK. Thank you.

Senator DEWINE. Let me just say that we look forward to working with you. Your job is a very important job. You have some very good people around the country who are doing very, very tough work everyday. They are protecting some very important people, but they are also getting some very tough people off the streets. If you need our assistance or you need our help or you need additional resources, we hope that you won't hesitate to come to us.

Mr. CLARK. Thank you, Senator.

Senator DEWINE. So we look forward to a good relationship with you.

Mr. CLARK. Likewise. Thank you, Senator.

Senator DEWINE. Thank you.

Let me ask our two judge candidates, Judge Larson and Judge Zouhary, a question about how you would describe how you run a court. One of the complaints I always hear from lawyers and kind of a complaint I had when I practiced law when I was a prosecutor was judges who would not let lawyers kind of try their case.

What is the balance there between controlling your own courtroom, which you have to do, but also letting a prosecutor or a U.S. Attorney or a defense counsel have some leeway in trying their case? You know what I am talking about.

Judge Larson?

Judge LARSON. Thank you, Senator. Yes, as a former prosecutor who spent a lot of time in the Federal courts and observing the way that different Federal judges ran their courtroom, I definitely developed—

Senator DEWINE. You have kind of seen it all.

Judge LARSON. I haven't seen it all by any sense, but I have seen quite a bit.

Senator DEWINE. You have seen a lot of variation, range.

Judge LARSON. I have tried to strike that balance in my own courtroom. I will give you one example. During the voir dire process, which, of course, is a very important process by which we select a fair and impartial jury, there were some Federal judges who would never allow attorneys to ask any questions themselves. There were others that perhaps allowed them to go on a bit too much.

Senator DEWINE. Right.

Judge LARSON. And I have tried to strike a balance there by always making sure that the attorneys do have an opportunity to ask some followup questions after I have asked the general questions, but placed what I considered to be reasonable limitations on that. That is just one example.

I do think it is important for judges to be aware that you need to maintain control of the courtroom. There is a need for firmness, but here is also a need for gentleness and allowing attorneys to try their case.

Senator DEWINE. Judge Zouhary.

Judge ZOUHARY. The only thing I would add to Judge Larson's fine answer is that I promised myself when I took the bench that I would not forget my years as a trial lawyer and utilize those experiences and to remember what it is like to be on the other side of the bench.

Senator DEWINE. I want to congratulate our children in the audience. They are doing well. We haven't put them to sleep yet and we won't press our luck here. Thank you all very much.

The record will remain open, which means that other members of the Committee can send you questions. We will keep that open for a week. The record will actually close on Wednesday, February 22, at 5 p.m. So that is the official time the record will close. At any point until then, written questions can be submitted to you. If you get written questions, we would hope that you would turn those around very quickly. That will expedite our procedure. If they are not turned around, we can't move, so we will wait for those. We hope then to have a markup, or markups, depending on the

pleasure of the Chairman and ranking member, and move your nominations forward.

So we appreciate it. You have been very helpful and we wish you all good luck, and we thank the families for being here and we congratulate all of you. Thank you very much.

[Whereupon, at 10:51 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 9, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Specter:

Enclosed please find responses to questions posed in your letter to Benigno Reyna, the former Director of the United States Marshals Service (USMS), following the Senate Judiciary Committee hearing regarding "Protecting the Judiciary at Home and in the Courthouse" held on May 18, 2005.

As you are aware, the Honorable John Clark, a career USMS employee, was designated Acting Director on August 1, 2005. Consequently, the responses to the questions are those of the new leadership of the United States Marshals Service.

We hope this information will be helpful to you. The Office of Management and Budget has advised that there is no objection to the presentation of these responses from the standpoint of the Administration's program. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Enclosure

Responses to Written Questions from Sen. Richard Durbin
Senate Judiciary Committee Hearing
"Protecting the Judiciary at Home and in the Courthouse
May 25, 2005

Question 1: **Director Reyna, thank you for meeting with me in March to discuss judicial security issues in the wake of the tragic killings of Judge Lefkow's husband and mother, and I appreciate your testifying at last week's hearing.**

As you know, several of us in the Senate worked to appropriate $12 million last month to improve the protection of judges and their families outside the courtroom. In her written testimony, Judge Roth said: "The judiciary fears, however, that the Marshals Service will not use this $12 million for the purpose of providing home security systems for judges, but for another USMS headquarters priority.

What can you tell this Committee, and the Judicial Conference, to assure us that the $12 million will in fact be used for home security systems for federal judges, rather than for other USMS headquarters priorities?

Answer: Following the Senate's 2005 emergency supplemental appropriation of $11.935 million to the USMS for judicial security, the USMS awarded a $3.5 million contract to purchase and install home intrusion detection systems to protect federal judges and their families. A second contract was recently awarded to include monitoring of these systems. The USMS intends to have all systems installed as soon as possible. All costs associated with these contracts will be funded from the $11.935 million. Funds not specifically spent on the home security systems will be used for other judicial security enhancements. The USMS has been working closely with the Administrative Office of the U.S. Courts (AOUSC) to develop the policy and process requirements to deliver and install the systems.

Question 2: **At the hearing, Senator Sessions asked you when federal judges would be able to have a home security system installed if he or she had a real threat. According to the Federal News Service transcript, your response was: "The $12 million that have been received [sic]. We'll be working with the administrative office of the U.S. courts to develop a process by which to address those matters of off-site security, and specifically alarm systems." Please provide a more direct answer to Senator Sessions' question. What is your best estimate as to the date by which federal judges who request home security systems will be able to have them installed? Please indicate whether the home security systems will be available to federal magistrate and bankruptcy judges, as well as Article III judges.**

Answer: In December 2005, the USMS awarded a $3.5 million contract to purchase and install home intrusion detection systems in the homes of federal judges. The USMS is in the process of negotiating a national contract to cover the ongoing monitoring of these systems after they are installed. The USMS intends to have all systems installed as soon as possible. Federal magistrate judges and bankruptcy judges are eligible to receive home intrusion security systems. As of March 1, 2006, nearly 1700 judges (of all categories) have expressed interest in participating in the program.

Question 3: **In the section appropriating $12 million for off-site security, the Supplemental appropriations bill conference report states: "In coordination with the Administrative Office of the United States Courts, the USMS shall submit a spend plan to the Committees on Appropriations prior to the obligation of any of these funds." Please indicate the steps you have taken thus far to coordinate this spend plan with the Administrative Office, any details of the plan that you can share at this time, and the timetable for when the plan will be submitted.**

Answer: After the contract was awarded to have the home intrusion detection systems installed, an updated spending plan was transmitted to Congress. A revised spending plan was necessary because the costs to purchase, install and monitor the systems were lower than originally estimated. This spending plan was reviewed and endorsed by AOUSC and members of the Judicial Conference prior to submission to Congress. All the items listed in the plan will improve the protection of judges and their families outside the courthouse. The first priority is to install and maintain the home intrusion detection systems. The House Appropriations Subcommittee on Science, the Departments of State, Justice, and Commerce, and Related Agencies approved the spending plan on January 17, 2006. The Senate Appropriations Subcommittee on Commerce, Justice and Science approved the spending plan on January 23, 2006.

Question 4: **Judge Roth also made the following statement in her testimony: "Quite frankly, both the Marshals Service and the Department [of Justice] have refused to participate in a formal standing group that would be charged with assessing security needs for the judicial branch on an ongoing basis."**

A. **Director Reyna, why is the Department of Justice unwilling to participate in a formal standing group dealing with the assessment of the judiciary's security needs?**

B. **Historically, has the Department of Justice ever been willing to participate in such a group? Does Attorney General Gonzales have the same approach to this issue as Attorney General Ashcroft, Attorney General Reno, and other past Attorneys General? Please explain.**

Answer: Historically, the Department of Justice and the USMS have worked closely with the judiciary to ensure adequate judicial security. We believe the communication between the two branches is quite good. The Department of Justice places a high value on the importance of our cooperative relationship with the Courts.

In the field, United States Marshals meet regularly with federal judges. In Washington, senior staff of the USMS and the Department meet regularly with the relevant officials of the Administrative Office of the United States Courts (AOUSC) and with judges who serve on the relevant committees of the Judicial Conference of the United States. Judge Roth had met regularly with a Senior Counsel to the Deputy Attorney General and she and members of the committee she chaired had met with both the Attorney General and the Deputy Attorney General. Throughout the spring of 2005, the Judicial Security Review Group appointed by the Attorney General to report to him on the subject of federal judicial security met repeatedly with

Judge Roth and the responsible staff of the Administrative Office. During the fall of 2005, Acting Director Clark established two working groups on judicial security issues. Both committees included the active participation of the AOUSC. The committees examined the technology available to enhance the judicial security process and the operations of the USMS Office of Protective Intelligence, respectively. The Department of Justice and the USMS meet and consult with the judicial branch on a routine and repeated basis concerning issues of judicial security, and it is not at all clear what a formal standing group would do to enhance the existing relationship.

Question 5: Please answer the following questions posed by Judge Roth in her oral testimony:

What policies are in place that govern how and when protective details will be assigned to judges and their families?

Answer: The USMS has established standards and practices for protecting the judiciary during high-threat trials and for protecting threatened judges when they are away from the courthouse. The Judicial Security Division continuously reviews and revises its risk-based standards in order to improve them. The revised standards and practices are then disseminated to each USMS district office. After the revised standards have been implemented, the Service's Office of Inspections, which is responsible for auditing district offices, randomly checks districts to ensure that they are following the policies relating to risk-based standards.

A. What criteria are used in threat assessments?

Answer: The USMS assesses threats by gathering information about the suspect's efforts to attempt to approach or harm a federal protectee. Protective intelligence is analyzed and evaluated to determine the severity of the threat. A protective investigation is conducted to identify the intent, motive, and ability of the suspect (or third party) to harm the protectee. The USMS determines the severity of the threat and what, if any, protective response is required. An on-going investigation monitors any changes in circumstances. The USMS and FBI work closely together on all aspects with the goal of disrupting, neutralizing, and preventing individuals or groups from committing acts of violence directed at the judiciary.

Unlike other agencies that provide permanent protective details to government officials (Cabinet members), the USMS provides protective details to judges, prosecutors, and other members of the judicial family based upon contemporary threats. When threats are deemed not credible or to have subsided, adjustments to the details are made based upon an up-to-date threat assessment. The result of the threat assessment assists the USMS in determining required protective measures.

On June 1, 2004, the USMS established the Office of Protective Intelligence (OPI) within the Judicial Security Division. OPI is responsible for the collection, analysis, and dissemination of all intelligence relating to the safety and security of USMS protectees. On a daily basis, the OPI provides an average of seven security advisories, intelligence bulletins, and law enforcement alerts generated by federal, state, and local law enforcement agencies to USMS district offices and headquarters senior staff.

B. How are decisions about competing resource needs resolved?

Answer: The United States Marshals Service performs a number of large-scale functions in addition to judicial security that compete for resources, including its fugitive apprehension program and running the day-to-day operations of the relocation of witnesses in the Federal Witness Security Program. Currently, the Marshals Service is responsible for hundreds of active witnesses in the Program and others who have entered the Program over its 35 year existence and need assistance from time-to-time on an ad hoc basis.

The USMS examines how workload is accomplished within the framework of USMS performance and safety practices. In FY 2006, a joint working group of district U.S. Marshals, Chief Deputy U.S. Marshals, administrative officers, and USMS headquarters program staff was assembled to examine district resources. Input from field and headquarters managers will be collected and analyzed. Final decisions regarding resource allocation will be made by the Director.

C. What is the process that establishes Marshals Service staffing levels for court security? Are these staffing levels being met?

Answer: The nature of USMS work does not facilitate the exclusive use of deputy marshals for courthouse, courtroom, and prisoner movement security. The 94 U.S. Marshals assign their deputy marshals as the mission dictates. On any given day, a deputy marshal may transport and book prisoners in the morning, produce prisoners in court in the afternoon, and serve legal process, investigate a fugitive case, or conduct a protective investigation relative to a threat after court concludes for the day. Depending on the types of cases being tried in the district and the types of inappropriate communications received, deputy marshals may be assigned temporarily to a protective detail on a judge or a federal prosecutor. Frequently, deputy marshals are pulled away from training, service of process, or investigating warrants to provide extra security in the courtroom. The magnitude of the USMS workload requires a flexible and efficient workforce in order to successfully maintain its mission. The USMS fills all vacant positions based on the availability of appropriations. Although there are competing demands on each Deputy Marshal's time, staffing levels are being met.

D. How are long-term resource needs determined and planned for?

Answer: The USMS recently convened a working group of district and headquarters personnel to develop an agency-wide USMS Strategic Plan covering FY 2006 through FY 2010. Specific goals and objectives were developed based on the agency's missions. Performance measures are being established so that progress toward the attainment of each objective can be tracked. The USMS Strategic Plan has been approved by the Department of Justice and is consistent with the Attorney General's Strategic Plan. Although most objectives can be accomplished using existing positions and funds, the

USMS Strategic Plan can also be used as the basis for long-term resource planning beginning with the FY 2008 budget cycle.

Question 6: Director Reyna, a May 16, 2005 *Washington Post* article entitled "Judges Seek to Oust Chief of Marshals," states: "In the Washington area and nationwide, federal judges said they fear for their families at home and members of the public in their courtrooms. They said the Marshals Service has ordered deep cuts in the ranks of deputy marshals, who secure prisoners, monitor courtrooms and protect judges." To what extent have there been cuts in the number of deputy marshals? What is the reason for these cuts?

Answer: The USMS disagrees with the *Washington Post* article that claims the USMS has "ordered deep cuts in the ranks of deputy marshals . . ." While it is true that the USMS has had to absorb permanent cuts to its funding due to rescissions, there have not been any cuts to the number of deputy marshals. Administrative positions, however, have been cut. In FY 2004, the Congress enacted the Administration's streamlining proposal which resulted in the elimination of 85 administrative positions. For the past five years, the total number of deputy marshal positions has steadily increased. In FY 2002, the Marshals Service's enacted appropriation, including reimbursable positions, included 3,079 deputy marshal and U.S. marshal positions out of 4,473 total positions. For FY 2006, the Marshals Service has 3,524 deputy marshal and U.S. marshal positions out of 4,904 total positions. During this time, the number of deputy marshals has increased by 445 positions or 14.5 percent.

Question 7: Director Reyna, you testified that the President's budget for fiscal years 2001 through 2005 requested a total of 993 new positions for the Marshals Service, but that Congress created only 531 new positions. Your testimony suggests that this shortfall of 462 positions may be the cause of some of the problems ascribed to the effectiveness of the Marshals Service.

A. Please describe the nature of these 462 positions and how many of these positions would be for deputy marshals?

Answer: The President's Budget submissions from FY 2001 through FY 2005 included requests for additional Deputy Marshals to handle the workload associated with judicial security and protection. The following chart displays the personnel resources requested and the resulting congressional action for each year. The difference between the cumulative request of 993 positions and the cumulative enacted positions of 531 is 462 positions. Out of the 462 positions, 241 of them would have been deputy marshals. The number of deputy marshals for each year is identified in brackets. Please see the chart on the following page:

Annual S&E Appropriation	Positions in President's Request		Pos. in House Bill	Pos. in Senate Bill	Enacted Positions	
	Total	Deputies	Total	Total	Total	Deputies
FY 2001	326	[203]	89	0	89	[65]
FY 2002	52	[41]	52	0	52	[41]
FY 2003	246	[168]	64	0	58	[58]
FY 2004	275	[231]	168	0	100	[100]
FY 2005	94	[94]	94	0	94	[94]
Supplemental Appropriations						
FY 2002 CT Supp					106	[106]
FY 2003/04 Wartime Supp					32	[32]
Totals	993	[737]			531	[496]

B. Where would these 462 positions be assigned to work and what would their duties and responsibilities entail? How many of them would be involved in the protection of judges?

Answer: All 462 positions would have been assigned to the districts, where their primary duty would have been judicial security and protection as well as other duties that fall within the purview of the USMS.

Question 8: In her testimony, Judge Lefkow stated that "we need a trained deputy marshal present at all court hearings, criminal and civil." In an April 7, 2005 letter, Chief Judge Charles Kocoras of the Northern District of Illinois wrote and requested "Attendance at all court sessions by either a deputy U.S. Marshal or Court Security Officer unless excused by the presiding judge."

A. Please indicate whether you agree or disagree with these requests, and explain why.

Answer: Courtroom personnel are assigned by district managers (in consultation with the judiciary) based on need and availability. The presence of a deputy marshal in all court hearings, criminal or civil, is determined by the district's staffing level. The presence of a Court Security Officer is governed by policy issued by the Administrative Office of the United States Courts.

B. What is the difference, if any, between Judge Lefkow's and Judge Kocoras's requests? What is the difference in the duties, responsibilities, salary, training, and minimum qualifications of Deputy U.S. Marshals versus Court Security Officers?

Answer: There are inherent and significant differences between the qualifications and responsibilities of a deputy marshal and a Court Security Officer (CSO). A deputy marshal is a career government employee who is required to meet a higher level of minimum qualifications to be hired and must successfully complete extensive law enforcement training to join the agency. A CSO is not a government employee and is an individual contracted for security services through a private company. Typically, CSOs are retired law enforcement officers who are hired by a private company and must meet the USMS' required contract minimum suitability standards. Some major differences in duties and qualifications follow:

DEPUTY U.S. MARSHAL

All deputy marshals must perform the following vital law enforcement duties and responsibilities:

- providing court security;
- transporting and processing prisoners;
- conducting body searches of prisoners and persons under arrest;
- producing prisoners in court and maintaining custody of prisoners throughout court proceedings;
- protecting sequestered juries;
- providing protection for court facilities and personnel;
- executing civil and criminal processes; and,
- enforcing court orders and Attorney General orders involving civil disturbances, acts of terrorism, etc.

The USMS employs a two-phase testing process for hiring deputy marshals. In Phase 1, applicants must pass a written examination. In Phase 2, applicants must successfully complete a structured personal interview. In addition, applicants must meet the following qualifications:

- be a U.S. citizen between the ages of 21 and 36;
- be in excellent physical condition;
- have a Bachelor's degree or three years of qualifying experience, or an equivalent combination of education and experience;
- possess a valid driver's license with a good driving record;
- undergo and pass a background investigation by the USMS; and
- undergo a rigorous 10-week basic training program at the USMS Training Academy in Glynco, Georgia.

The entry-level Civil Service grade for a deputy marshal is a GS-5 ($36,500 per year) or a GS-7 ($41,500) using the FY 2006 federal law enforcement salary table. Candidates qualify at the GS-5 level if they have a four-year degree from an accredited college or university, or have a minimum of three years of responsible volunteer or paid work experience. Candidates qualify at the GS-7 level if they already qualify at the GS-5 level and they have one year of law enforcement experience. Superior academic achievement also may qualify an

individual for the GS-7 level. If an individual does not qualify based on education or experience alone, the USMS combines education and experience in an attempt to satisfy the minimum general experience requirements at the GS-5 level.

COURT SECURITY OFFICERS

A CSO's duties and responsibilities fall into five areas:

- *Entrance Control* - The CSO must enforce the district's entry and identification system. This includes operating security screening equipment to detect weapons, contraband, and prohibited items, and checking such items as handbags, briefcases, computers, packages, baby carriages, wheel chairs, etc. Any items confiscated during the screening process must be documented by the CSO and turned over to the USMS.

- *Roving Patrol* - The CSO must patrol court facilities and grounds of the facility in accordance with applicable post orders.

- *Stationary Post Assignments* - The CSO must stand guard at stationary posts. This may include monitoring closed circuit television, duress alarm systems or other such equipment, courtrooms, judges' chambers, and jury rooms.

- *Escort Duties* - When deemed necessary by the USMS, the CSO must provide armed escort services for judges, court personnel, jurors, and other designated individuals. Generally, this may include escorting individuals to a garage or parking area, from one room to another, from one floor to another, or from one facility to another. With USMS authorization, the CSO also may be required to travel with and/or drive an individual in a Government-owned vehicle to various destinations. Escort services for the movement and protection of money is strictly prohibited.

- *Law and Order* - In addition to the duties listed above, the CSO is responsible for detaining any person attempting to gain unauthorized access to Government property or a court proceeding, or attempting to commit acts that imperil the safety and security of Government employees, property, and the public. If a person is detained, the CSO must immediately turn the detainee over to the USMS and complete an incident report.

CSOs are hired by one of several private sector companies, which in turn are under contract with the USMS. Under terms of the CSO contract, the Contractor must provide security personnel who meet the following minimum qualifications. Each applicant must:

- be a citizen of the United States of America;

- be at least 21 years of age (while there is no maximum age limit for CSO positions, all applicants must be able to meet the physical demands of the job and be capable of responding to emergency situations);
- be a high school graduate or have a GED, or equivalency;
- be able to read, write, and speak the English language fluently (CSOs also may be required to be fluent in any other language determined to be necessary by the U.S. Marshal of the district where the services are to be performed);
- possess or be able to obtain a valid state driver's license for the state where services are to be performed, and have a safe driving record for the past five years;
- have at least three calendar years of verifiable experience as a certified law enforcement officer or its military equivalent, provided the experience includes general arrest authority. This experience does not have to be consecutive. General arrest authority is defined as the authority conveyed upon a person to make felony arrests of persons not under a custodial arrangement (prisoner, probation or parole violator) throughout a valid jurisdiction. The state or federal codes specific to the person's qualifying experience will be used to determine the CSO applicant's arrest authority. The Contractor must verify the CSO applicant's arrest authority prior to submitting the application for approval;
- be free from conviction of a misdemeanor crime of domestic violence in accordance with Title 18, Section 922(g)(9) of the United States Code. The term "convicted" is generally defined in the statute as excluding anyone whose conviction has been expunged, set aside, or pardoned;
- successfully pass a background investigation;
- possess the ability to meet and deal tactfully with judges, attorneys, Government personnel, and the public;
- possess the ability to understand, explain, interpret, and apply rules, regulations, directives, and procedures;
- possess poise, self-confidence, and the ability to make sound decisions and react quickly under stressful conditions;
- possess the ability to prepare clear and concise reports;
- possess the ability to learn and adapt to changing situations; and,
- possess the ability to accept and respond to instruction and direction.

In order to reinforce a CSO's ability to perform the job functions noted in the contract, the Contractor must develop and conduct eight hours of training for all CSOs annually. This training is mandatory and must be attended by all CSOs. Prior to developing the training, the Contractor must survey and consider prior security breaches and refine security techniques, as necessary.

The Contractor also must ensure that each individual designated to perform as a CSO has successfully completed or graduated from a certified federal, state, county, local, or military law enforcement training academy or program that provided instruction on the use of police powers in an armed capacity while dealing with the public. The certificate or diploma must be recognized by federal, state, county, local, or military authorities as a certification that an individual is

eligible for employment as a law enforcement officer. Individuals possessing five years of military experience involving functions similar to those previously described also may be considered for a CSO position. In cases where a CSO applicant did not receive a certificate or proof of law enforcement training, the Contractor may provide a signed statement from a supervisory official of the department or agency indicating that an applicant was employed as a law enforcement officer and that no certificate was issued. The statement must include all dates of employment the individual served in a law enforcement capacity. The Contractor also must include a copy of the signed statement with the CSO application.

C. How many more Deputy U.S. Marshals and Court Security Officers would the USMS need in order to satisfy the request of Judge Lefkow and Judge Kocoras to have coverage at every civil and criminal court hearing?

Answer: The number of Deputy Marshals required for the level of coverage referenced by Judges Lefkow and Kocoras would depend on a number of unknown factors, including the court workload for the year and the impact of any newly created judgeships.

Question 9: In her written testimony, Judge Roth stated that "In virtually every instance, it is because of the judiciary, not the Executive Branch, that significant levels of additional financial resources have been provided to the Marshals Service." Do you agree or disagree with that statement? Please explain.

Answer: We disagree with Judge Roth's statement. While the USMS understands Judge Roth's frustrations, we also recognize that many factors come into play in the federal budget process. As a component of the Department of Justice, the USMS works closely with both DOJ and the Office of Management and Budget in developing its budget requests. The President's Budget requests over the past few years have sought enhancements for the USMS. These enhancements were requested by the President and the Department of Justice, not by the Courts as Judge Roth's testimony indicated. Information from the Executive, Legislative, and Judicial branches of government is factored into the budget formulation process. Further, Congress' role in the process is especially important. When events occur that cannot be addressed through the regular appropriations process, there are supplemental appropriations that are quickly assembled and enacted by Congress. These supplemental appropriations include advice from all branches of government.

Question 10: Please review the written testimony prepared for last week's hearing by the Justice Department's Inspector General, and indicate if and how you disagree with any of the Inspector General's statements and conclusions.

Answer: The OIG testimony, and its March 2004 report regarding judicial security, included six recommendations to the USMS which are addressed below. The USMS concurred with the OIG's conclusions and submitted the following comments:

OIG Recommendation 1: Ensure that all threats to the judiciary are assessed within established timeframes.

The USMS established the Office of Protective Intelligence (OPI) to ensure that all threats to the judiciary are assessed within established timeframes. OPI will have 25 full-time positions and is responsible for threat management, which consists of collecting, analyzing, and disseminating protective intelligence relating to the safety and security of members of the judiciary, USMS protectees, and courthouse facilities. By the end of FY 2005, almost 1,000 inappropriate communications had been reviewed (up 43% over FY 2004). To ensure that all district offices keep abreast of the latest polices and procedures, updated information is available to USMS field components in a web-based format, eliminating the paper-based manual.

OIG Recommendation 2: Update the historical threat database or develop a new database to perform comparative assessments.

The USMS has updated all historical threat data into the Justice Detainee Information System (JDIS) database. The resultant database now provides deputy marshals and intelligence analysts with historical threat information dating back to 1980.

Merging the older records into JDIS has two benefits: 1) it allows data from closed cases to be available to deputy marshals who are working on new cases; and 2) it improves the accuracy of the comparative analysis by combining closed cases with known outcomes reported between 1980 and 1995 with cases from 1996 to the present.

Altogether, there are over 10,000 threat-based records in the system. Of this amount, 7,900 are closed cases and are used for comparison with newly-reported potential threats. The merged database also includes other software improvements to increase its user-friendliness, such as drop-down windows and automatic field population to speed data entry.

OIG Recommendation 3: Assign full-time representatives to all 56 FBI field office JTTFs and ensure effective USMS liaison with other intelligence agencies.

The USMS is committed to providing the necessary resources to staff all 56 FBI field office JTTFs. The USMS has attempted to provide support on a collateral basis at the districts' discretion. As a result, the USMS has been able to maintain 18 full-time and 33 part-time representatives with current spending levels. The USMS will continue to look for and take advantage of opportunities to expand its JTTF presence until all 56 offices are staffed.

OIG Recommendation 4: Create a centralized capability to identify, collect, analyze and share intelligence.

In addition to establishing the Office of Protective Intelligence, the USMS makes use of existing federal intelligence resources. The USMS has coordinated extensively with the U.S. Secret Service's National Threat Assessment Center (NTAC) which maintains the records of more than 18 participating agencies on the state, local, and federal levels. The USMS is a full participant in the NTAC system that catalogues threat information and puts deputy marshals in contact with other investigators in order to share threat intelligence. NTAC has helped the USMS to review some of its operations and training

designs with the goal of enhancing USMS threat assessment and protection operations. To date, the USMS has merged or entered nearly 4,200 threat records in the NTAC system. The USMS has also acquired space to house the OPI operation consistent with other facilities in the law enforcement intelligence community. The facility will operate on a 24-hour basis to address threats and inappropriate communications to USMS protectees.

OIG Recommendation 5: Ensure that all Chief Deputy Marshals and all JTTF representatives have Top Secret clearances and ensure that each district has operational secure communications equipment.

All Chief Deputy Marshals and all JTTF representatives have Top Secret clearances or are being processed for their Top Secret clearance. Each district has at least one secure telephone that can transmit in classified mode.

OIG Recommendation 6: Revise USMS guidance to establish risk-based standards and require after-action reports for high threat trials and protective details.

As stated in our response to Question 5A and to OIG recommendation #1 (above), the USMS has established standards and practices which include after-action reports. The USMS will now require an after-action report for all high-threat trials.

Question 11: On May 16, 2005, the Justice Department's Inspector General issued a report which found that the Marshals Service fails to adequately hire independent contractors to use as courtroom and prison guards. In your response to the report, which is attached as Appendix VII of the report, you indicate that you are in agreement with all of the recommendations and will take the necessary steps to implement them. However, you noted that some of the recommendations "will require the concurrence and assistance of the Department of Justice, Office of Management and Budget, and Congress."

A. Which recommendations do you believe will require the concurrence and assistance of Congress? Please explain.

Answer: The recommendation in question is Recommendation 2, which was resolved and closed through the Audit Follow-up Process.

B. In conjunction with your implementation of the recommendations, the Inspector General has asked that your agency produce multiple documents to it by June 30, 2005, such as field guidance and information about independent contractor training. Do you intend to meet this deadline?

Answer: Several documents were provided to the OIG on July 6, 2005, the date of the USMS' first response to the OIG's final report. Other documents cannot be produced until certain actions take place. Draft documents have been produced in the interim. The status of each recommendation requiring production of documents is detailed below:

Recommendations 1, 4, and 7: "... please provide by June 30, 2005, copies of procedural guidance to the field and a list verifying compliance with the

aforementioned policy memorandum. Include in the list the district, name and title of certifying official and the date of certification."

Status: (Closed) – On July 6, 2005, the USMS provided the OIG with documents evidencing that all districts and the Assistant Director for JPATS had been made aware (in writing) of the adverse audit findings and reminded of the requirement for stringent compliance with existing USMS Guard Policy. In the July 6 correspondence, the USMS explained that asking districts to certify compliance in writing would not necessarily produce meaningful results. Instead, the USMS proposed that compliance be verified and monitored through the USMS' internal review process. On September 16, 2005, in order to close this recommendation, OIG requested that USMS "provide ... copies of three district reviews performed by the Operations Support Division after implementation of the Assistant Director's memoranda on ensuring compliance with USMS guard policy." Copies of the requested district reviews were provided to OIG as attachments to a memorandum dated December 13, 2005. OIG closed this recommendation on December 21, 2005. Based on the documentation provided, OIG also closed **Recommendation 4** (regarding compliance with the policy requirement that contracting officers maintain complete contract files as dictated in existing policy) and **Recommendation 7** (regarding compliance with the requirement that independent contractors required to carry firearms qualify every six months as dictated in existing policy).

Recommendation 2: "In order to close this recommendation, please provide the results of the review and implementation plans, pending approval of the FY 2007 budget request ..."

Status: (Closed) – Documents were provided as detailed in the response above.

Recommendation 3: "... the USMS stated that it will conduct a review of its policies on the use of independent contractors as guards, with regard to revising the fitness-for-duty requirements. In order to close this recommendation, please provide the OIG with the results of the review and documentation showing that revised fitness standards have been implemented."

Status: (Resolved/Open) – In its July 6, 2005, response to the final report, the USMS stated that a committee of district and headquarters personnel was in the process of revising the USMS guard policy, including fitness-for-duty standards, and that the first draft of the revised policy was anticipated by the end of the month. On September 16, 2005, the OIG acknowledged the USMS' July 6 correspondence and requested that the USMS "... provide the OIG with the results of the committee's review and the timeframe for implementation of revised fitness standards." On December 13, 2005, the USMS provided OIG with a copy of a draft revision of the USMS guard policy, explaining that the revised policy was in the final clearance process. The USMS further explained that the committee found that the current medical standards are appropriate when applied as part of the new policy. On December 21, 2005, OIG requested that the USMS "...notify the OIG when the revised policy has been finalized and disseminated to the district offices and JPATS." This recommendation remains open until the

revised policy is cleared and finalized. The next update from the USMS to OIG is due March 21, 2006.

Recommendation 5: "... please provide a copy of the form developed to document evaluations."

Status: (Resolved/Open) – As with Recommendation 3 above, this recommendation will be closed once the revised guard policy is cleared and finalized. The USMS provided a draft copy of the revised guard policy to OIG on December 13, 2005. The USMS has included a requirement for annual performance evaluations of contract guards in conjunction with the contract renewal process. The USMS will provide a copy of the evaluation form to the OIG as soon as the new policy is cleared and finalized.

Recommendation 6: "... please provide the OIG with the description of the system developed for tracking independent contractor training by June 30, 2005, and the timeframe for implementation."

Status: (Resolved/Open) – As with Recommendations 3 and 5 above, this recommendation will be closed once the revised guard policy is cleared and finalized. The USMS provided a draft copy of the revised guard policy to the OIG on December 13, 2005. The USMS has included in its policy revisions a draft District Security Officer Certification Form, to be completed for each contract guard, which specifically delineates the training courses required of each contract guard.

Question 12: Last year, the consulting company Science Applications International Corporation (SAIC) issued a report entitled "Management of the Protection Afforded the Federal Judiciary." The report was prepared for the Marshals Service and mandated by Congress. The report made many recommendations, such as recommending that the Marshals Service be clearly designated as the lead agency for the protection of the federal judiciary.

A. What changes, if any, has the USMS made in response to recommendations made in the SAIC report?

Answer: Many of the recommendations made by SAIC were directed at the USMS, with the remaining recommendations directed at AOUSC or DOJ. Of those affecting the USMS, the recommendations simply reiterated existing procedures or practices at the USMS. For example, four recommendations to improve judicial security already are in place: 1) the USMS is the lead agency for the protection of the federal judiciary; 2) the USMS has updated the judicial security MOU with the Federal Protective Service and the General Services Administration; 3) the USMS has updated the list of standard security components in courthouses; and 4) the USMS monitors security systems in courthouses.

B. Does the SAIC report make any recommendations with which you disagree? If so, please explain which ones the USMS disagrees with, and why.

Answer: The USMS does not agree with the recommendation that "DOJ should consider taking action to have some of the USMS missions transferred to other elements of the Executive Branch." This recommendation includes examples where the USMS provided security support for the Winter Olympic Games and the U.S. Naval Base in Vieques. These and other examples are based on the Attorney General's orders. The USMS is a component of the Department of Justice and is subject to following the orders of the Attorney General. As the leader of the Department of Justice, the Attorney General must have the authority and discretion to assign any component to meet the law enforcement needs of the American public.

Question 13: In a letter sent to me dated April 11, 2005, Assistant Attorney General William Moschella indicated that Attorney General Gonzales had created a Judicial Security Review Committee to study "some of the questions raised as a result of the recent tragic events in Chicago and Atlanta."

A. Please indicate who serves on this Committee, how the membership of the Committee was determined, and the questions the Committee is studying.

B. Please also indicate when the Committee is expected to issue a report and recommendations, and whether the report and recommendations will be shared with the federal judiciary and Congress.

Answer: The Attorney General appointed the Office of Legal Policy to lead the Judicial Security Review Committee. The Committee was led by a Deputy Assistant Attorney General from the Office of Legal Policy. Other members of the Committee were selected because of the expertise they could contribute to the Committee's work or because of their responsibility for related issues. The members of the Committee aside from the Office of Legal Policy were a representative of the Office of the Deputy Attorney General, a representative from the Federal Bureau of Investigation, a representative of the Criminal Division, a representative of the Office of Legislative Affairs, a representative of the Executive Office of United States Attorneys, a representative of the Bureau of Prisons, a representative of the USMS, and the United States Attorney for the Western District of Washington. The Committee submitted its report to the Attorney General during the summer of 2005. Its general recommendations have been shared with the judiciary, although the specifics of the recommendations, many of which are law-enforcement sensitive, have not been shared with the judiciary or Congress. A number of recommendations have been implemented or are in the process of being implemented. Other recommendations remain under consideration pending the confirmation of the new Director of the USMS. Accordingly, much of the report and the specific details of many of its recommendations remain deliberative and therefore have not been disclosed.

Question 14: Judge Roth submitted a legislative proposal which included five different provisions. Please indicate whether the USMS supports or opposes each of these provisions, and why.

Answer: Legislative language similar to Judge Roth's proposals is included in court security legislation that was amended and passed in the House of Representatives (H.R. 4472) on March

8, 2006. One of her proposals, "Sec. 4: Emergency Authority to Conduct Court Proceedings Outside the Territorial Jurisdiction of the Court," became a free-standing bill, and was enacted and signed into law in September 2005 (P.L. 109-63). In regard to Judge Roth's other legislative proposals, the USMS offers the following comments:

Sec. 1 Judicial Branch Security Requirements – Section 13 of H.R. 1751 would ensure that "the United States Marshals Service shall consult with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements." The Department of Justice and the United States Marshals Service would strongly object to statutorily requiring "consultation and coordination" between the USMS and the AOUSC. The effectiveness of such cooperation cannot be meaningfully legislated. Not only is this language ambiguous, but it would impose unclear and uncertain requirements that would sow confusion and impede the effective deployment of resources, without providing any clear directive or benefit enhancing judicial security.

Historically, the Marshals Service has worked closely with the AOUSC and the Judicial Conference regarding the Judiciary's security requirements. Indeed, cooperation and communication between the Judiciary and the Marshals Service takes place every day across the Nation, in each judicial district as well as in Washington, D.C., at the levels of USMS Headquarters and the AOUSC. U.S. Marshals and district personnel, including the district Judicial Security Inspectors, have daily contact and discussions with the judiciary concerning security in every district. The USMS believes an open forum at the headquarters and district levels, with forthright discussions of security, which is the purpose of each district's Court Security Committee, is extremely valuable. Such forums include frequent meetings and telephone conversations, as well as bi-annual meetings with the Judicial Conference's Committee on Judicial Security (formerly the Committee on Security and Facilities), and the district courts' Court Security Committees. Members of the Federal Judiciary have also met with the Attorney General and the Deputy Attorney General to discuss judicial security.

Sec. 2 Protections Against Malicious Recording of Fictitious Liens Against Federal Judges – The USMS has long supported this language and further believes that maliciously filing a false lien against a Federal employee who is not a judge is also nefarious and should be criminalized. We would recommend clarifying the proposal to require a connection between the filing of a false lien and the performance of a Federal employee's official duties.

Sec. 3 Judges Firearms Training – Given the number of threats they face, it is understandable that federal judges may wish to carry firearms. However, the USMS assesses these threats to determine the level of danger. Many of the threats result in around-the-clock protective details of judges and Assistant U.S. Attorneys. Deputy Marshals are the best in providing security for judicial protective details. USMS personnel provide their expertise in the latest state-of-the-art protective techniques and equipment. Although the USMS agrees that judges who carry firearms should be trained and certified (and recertified) in their use, the proposal does not authorize funding or resources needed to carry out the proposed mission of firearms training, such as staff, range facilities, and ammunition. If the burden fell on the USMS, the impact of

potentially training 2,200 federal judges and others clearly would be very challenging for USMS district firearms instructors. The USMS believes that trainees should be certified to the level of a deputy marshal. To establish separate standards for judges and others would over-burden USMS instructors.

Sec. 5 Repeal of Sunset Clause – The USMS supports this provision, which would make permanent the redaction of financial disclosure information pertaining to federal judges.

SUBMISSIONS FOR THE RECORD

Louise W. Biddle
4551 University Avenue
Riverside. CA 92501

February 1, 2006

The Hon. Diane Feinstein:
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

Dear Senator Feinstein:

It is my privilege to write to you in support of Magistrate Judge Stephen G. Larson who President Bush has sent to the Senate Judiciary Committee for consideration.

I have been involved in the Riverside, CA legal community by marriage many years ago and since 1990 as the Executive Director of the Riverside County Bar Association. After my retirement in late 1997, I worked with the Federal Bar Association of Riverside and San Bernardino where I met Judge Larson in 1980. I worked closely with him when he became the president of that organization. He became a very active member of our legal community.

Judge Larson meets all the requirements that will be considered necessary for a federal judge. Though young, he has the legal knowledge, the judicial temperament, the excellent reputation and respect of his peers as well as the community, a complete lack of bias and a reputation of being an extremely hard worker.

Judge Larson enjoys the support of the Inland Empire communities as well as bipartisan support for this position. Our two counties are growing so rapidly that we need someone like Judge Larson who has been highly thought of in the last six years since he became our magistrate judge.

Thank you for your consideration in this matter.

Very truly yours,

Louise W. Biddle

Louise W. Biddle

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3rd District, Arkansas
www.boozman.house.gov
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Congress of the United States
House of Representatives
Washington, DC 20515

INTERNATIONAL RELATIONS
SUBCOMMITTEES
AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS
MIDDLE EAST AND CENTRAL ASIA

VETERANS' AFFAIRS
SUBCOMMITTEES:
CHAIRMAN,
ECONOMIC OPPORTUNITY
OVERSIGHT AND INVESTIGATIONS

December 13, 2005

The Honorable Arlen Specter
United States Senate
Chairman, Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Specter:

I am writing to you to express my support for the nomination and confirmation of John F. Clark to the position of Director of the U.S. Marshals Service. His outstanding record of service as a U.S. Marshal should make his nomination and confirmation a pleasant and expeditious process.

I had the opportunity to meet with Mr. Clark, in his current position as Acting Director of the U.S. Marshal Service, on Friday, October 7, 2005. I was impressed not only by his long history with law enforcement, but also by his passion and enthusiasm for the Marshal Service. We had a chance to talk at length about his service and the positions he has held. He shared with me his visions for the future of the Marshals Service and displayed a deep understanding not only of what the Marshals Service's mission does, but how to ensure it is fulfilled.

As you know, I have the opportunity to meet with officials from every agency to discuss their current accomplishments, but more importantly their ideas for the future. I take particular interest in the Marshals Service because of my district's long history with them. In the 1870s, U.S. Marshals worked with Judge Isaac Parker, also known as "Hangin' Judge Parker", to establish law an order in the Indian Frontier. Judge Parker and the Marshals were based in Fort Smith, Arkansas, located along the western border of my congressional district. The U.S. Marshals have been an integral part of my district's history and were responsible for the apprehension of some of our nation's most notorious outlaws. I take great pride in the historical impact the Marshal Service has made in Northwest Arkansas, and I support the Service in its law enforcement efforts today. While the Indian Frontier has long since been tamed, the importance of the U.S. Marshals Service continues.

Chairman Specter, as someone who fully supports the U.S. Marshals Service and takes a great interest in their success, I urge your committee to begin confirmation proceedings for John F. Clark to the position of Director of the U.S. Marshals Service. I cannot think of another person with

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4943 Old Greenwood Road, Suite 1
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Fax: (479) 783-7662

303 North Main, Suite 102
Harrison, AR 72601
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Fax: (870) 741-7741

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his history of service, nor his enthusiasm and vision for the Service. I believe Mr. Clark will lead the Service to continued success while instilling that same enthusiasm and passion he exhibited to me.

Again, thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact me or Kathee Facchiano on my staff at (202) 225-4301.

Sincerely,

John Boozman
Member of Congress

JB:kf

JEAN CIHIGOYENETCHE*
SCOTT J. GROSSBERG*
RICHARD R. CLOUSE*
KATHARINE L. SPANIAC*
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THE LAW OFFICES OF

CIHIGOYENETCHE
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☐ WEST LOS ANGELES
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LOS ANGELES, CA 90025
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January 25, 2006

VIA FACSIMILE & U.S. MAIL

The Hon. Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

Dear Senator Feinstein:

President Bush has recently sent to the Senate Judiciary Committee the nomination of Stephen Larson for District Court Judge for the Central District of California. Judge Larson currently sits as a federal magistrate presiding in Riverside, California. I urge you and the Committee to recommend to the Senate his confirmation.

I have had the privilege of appearing before Judge Larson since he was initially selected as a magistrate judge back in 2000. He has at all times demonstrated the legal acumen, fairness and diligence that are such important qualities on the bench. Moreover, he has consistently demonstrated an ability to administer his courtroom in such a way as to provide dignity and respect to all who appear before him. I have literally watched him deal with all types of persons, from the most impoverished detainee on an immigration matter, to a highly respected legal commentator arguing a complex issue of law, and observed him at all times to be engaged, attentive and in control of the proceeding before him. I have never seen him display arrogance or condescension, nor have I ever seen him unprepared or indecisive.

I am a civil practitioner, with most of my practice before Judge Larson involving civil rights litigation where he has presided as the trial judge through stipulation of the parties. The fact that so many litigators from both the plaintiffs' and the defense bar agree to have Judge Larson sit for all purposes on what are usually highly complex and/or contentious matters is a clear demonstration of just how highly Judge Larson is regarded by those who appear before him.

Thank you for your consideration.

Very truly yours,

CIHIGOYENETCHE, GROSSBERG & CLOUSE

RICHARD R. CLOUSE

01/25/2006 1:22PM

FAX PAGE 2/ 2

UNIVERSITY OF LA VERNE
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Fax: 909.460.2081

January 23, 2006

The Honorable Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

Re: Magistrate Judge Stephen G. Larson

Dear Senator Feinstein:

I am pleased to write in support of the nomination of Magistrate Judge Stephen G. Larson as United States District Judge for the Central District of California. President Bush has sent the nomination to the Senate.

I have known Judge Larson for several years, both as colleagues in the Inland Empire Chapter of the Federal Bar Association, and at the College of Law, where he serves with great distinction as an Adjunct Professor of Law.

Judge Larson is one of the fairest and most knowledgeable jurists I have known in forty years of law practice and teaching. I have always known him to adhere to the highest standards of professional competence and integrity.

He has served as a Magistrate Judge since 2000, and has earned the respect of the local legal community, which strongly supports this appointment.

I join others in requesting that his nomination be confirmed.

Very truly yours,

Charles S. Doskow
Dean Emeritus and Professor of Law

OFFICE OF THE FACULTY 01/24/2006 7:36PM

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January 24, 2006

The Honorable Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510
Fax: 202-228-3954

RE: Nomination of Stephen G. Larson
to the Federal District Court
Via Facsimile; mailed separately

Dear Senator Feinstein:

I am delighted that President Bush has sent the nomination of Federal Magistrate Judge Stephen G. Larson to the Senate Judiciary Committee for consideration as a federal district court judge. He is an outstanding, deserving nominee.

I have had the pleasure of knowing Stephen Larson since June 2003, the time I became Dean at the University of La Verne College of Law. He has been a member of our adjunct faculty since 2002, teaching courses in Federal Courts, Conflicts, and Civil Rights. He is a superb teacher, who is adored by his students. His teaching evaluations are always excellent. I know that Federal Magistrate Judge Larson seeks to instill in his students standards of fairness and adherence to the law – the same qualities he possesses. He cares deeply about the legal profession and has exceptionally high ethical values.

Stephen G. Larson has gained an exemplary reputation as a federal magistrate judge, which he has earned through his service on the bench in California since 2000. He enjoys widespread and bipartisan support in the community.

I have no doubt that Federal Magistrate Judge Stephen G. Larson possesses the legal skills, acumen, and personal attributes that qualify him for a federal district court judgeship. I respectfully request that his nomination be confirmed.

Sincerely yours,

Donald J. Dunn
Dean and Professor of Law

Juárez & Vega
Attorneys at Law

256 NORTH "D" STREET, SUITE 408, SAN BERNARDINO, CALIFORNIA 92401
TELEPHONE (909) 889-0485 FAX (909) 384-0952

January 31, 2006

The Honorable Senator Dianne Feinstein (D - California)
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

Re: Nomination of Magistrate Judge, Steven G. Larson

Dear Senator Feinstein,

I am informed, and please to know, that President Bush has sent the nomination of Magistrate Judge, Steven G. Larson, to the Senate Judiciary Committee for its consideration as United States District Judge.

I am an attorney, licensed to practice in California, and have spent all of my 27 years of practice largely within the counties of San Bernardino and Riverside. As the federal court came to Riverside in 1995, I chose and have been pleased to practice in the federal criminal courts.

It was in a professional capacity that I first became acquainted with the work of Magistrate Judge Larson. Since the year 2000, I have appeared in his Courtroom on numerous occasions. Additionally, I am actively involved in other community activities. I have come to know and observe Magistrate Judge Larson in both the legal and community aspect of his work. It is from these contacts and these social and community settings that I have also been pleased to come to know Magistrate Judge Larson on a personal basis.

I am very impressed with the standard of fairness, confidence and intelligence that Magistrate Judge Larson demonstrates daily in his work on the bench. I can speak for largely all of my colleagues and various other bench officers to confirm the tremendous respect for his exemplary reputation for hard work and dedication in his capacity as federal Magistrate Judge. In addition, as a lifelong democrat with a strong sense of social justice and a liberal approach to my legal and political activities, I am very active in the community working with community leaders to ensure that the less fortunate have equal access to the legal system and are treated fairly. I can say, without hesitation, that Magistrate Judge Larson has substantial support from the community that I am acquainted with.

Please be so kind as to consider this letter as my request that your committee consider my opinion and support for Magistrate Judge Larson's nomination as United States District Judge. If I can provide additional input, please do not hesitate to contact me.

Respectfully yours,

CARLOS L. JUÁREZ
Attorney at Law

JNV:rm

01/31/2006 5:25PM

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John S. Crouchley
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Janet I. Levine
Michael J. Lightfoot
Jeffrey H. Rutherford
Stephen B. Sadowsky
John D. Vandevelde
Ryan Williams

SENT VIA FAX AND U.S. MAIL
(202) 228-3954

January 25, 2006

Senator Diane Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Feinstein:

I am writing in strong support of President Bush's nomination of Magistrate Judge Stephen G. Larson to the federal district court in Los Angeles.

I have known Judge Larson for the past fifteen years. In the short period he has been on the federal bench, he has gained an unparalleled reputation in the larger Los Angeles legal community for integrity, judgment, and hard work.

I recommend his confirmation without reservation.

Yours very truly,

LIGHTFOOT, VANDEVELDE
SADOWSKY & LEVINE

MICHAEL J. LIGHTFOOT

MJL/ksg

01/25/2006 7:01PM

O

O'MELVENY & MYERS LLP

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TOKYO
WASHINGTON, D.C.

January 24, 2006

Via Facsimile and Mail 202-228-3954

OUR FILE NUMBER
0600000-00010

The Hon. Dianne Feinstein
Senate Judiciary Committee
331 Hart Senate Office Building
Washington, D.C. 20510

WRITER'S DIRECT DIAL
(213) 430-6430

WRITER'S E-MAIL ADDRESS
pmcnamara@omm.com

Re: ***Nomination of U.S. Magistrate Judge Stephen Larson***

Dear Senator Feinstein:

I was pleased to learn that President Bush has sent to the Judiciary Committee for its consideration and recommendation the nomination of United States Magistrate Judge Stephen G. Larson to be appointed as a United States District Judge for the Central District of California. I wholeheartedly endorse President Bush's nomination and encourage the Judiciary Committee to vote to approve that recommendation.

A little over a quarter of a century ago, I first met Stephen Larson. Then he was a student in a competitive debate institute at which I was teaching. Impressed with Stephen, I stayed in touch and he eventually came to work at our law firm, first as a summer associate in 1988 and then, following his graduation from law school, as an associate. He did excellent work while he was here at O'Melveny, demonstrating then the hard work, fair-mindedness, and compassion that are among his admirable traits today.

As a United States Magistrate Judge, Judge Larson consistently has demonstrated the uncompromising fairness and adherence to the law that should be the hallmark of every federal judge. Moreover, he brings a high level of civility to his courtroom, and even lawyers who are on the losing side of his decisions believe they had been treated fairly by Judge Larson.

As I have discussed Judge Larson's nomination with my colleagues in the legal community, as well as with people outside that community who know him, I recognize the deep widespread, bipartisan enthusiasm engendered by his nomination. He has worked hard to achieve success in his life, and he has left his community a better place through his efforts. I expect this will continue should the Senate approve his nomination. I encourage you to support him.

Sincerely,

Paul G. McNamara

PGM:pc

01/25/2006 10:36PM

NASATIR, HIRSCH, PODBERESKY & GENEGO
A PROFESSIONAL LAW CORPORATION
MAIN STREET LAW BUILDING
2118 MAIN STREET
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MICHAEL D. NASATIR*
RICHARD G. HIRSCH*
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TARIQ A. KHERO

*CERTIFIED SPECIALIST - CRIMINAL LAW
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

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FACSIMILE
(310) 392-9029
(310) 392-8260

February 6, 2006

VIA FACSIMILE AND U.S. MAIL **(202) 228-3954**

Honorable Dianne Feinstein
U.S. Senator
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Candidate for United States District Court Judge Stephen G. Larson

Dear Senator Feinstein:

It is my understanding that President Bush has sent the nomination of Magistrate Stephen G. Larson to the Senate Judiciary Committee for nomination to the United States District Court Bench for the Central District of California. I am a criminal defense attorney who has opposed Judge Larson when he was an Assistant United States Attorney. I have also appeared before him in his capacity as United States Magistrate Judge.

Judge Larson was a tremendous lawyer when he was an Assistant United States Attorney. His legal knowledge, judgment and temperament were unique among his peers. I can honestly say he has the respect of all of the colleagues that I know who practice in federal court in this district.

Besides being an outstanding Assistant United States Attorney, Judge Larson has been an excellent Magistrate Judge in his present position. Once again, his knowledge of the law is unparalleled. His legal judgment is excellent, and he has been extremely fair in his rulings.

Judge Larson is uniquely humble and personable on the Bench. He has a relaxed attitude that takes much of the tension out of otherwise tense situations. He is equally personable with both sides of a case. He is also extremely understanding of how to treat criminal defendants when they are in

4708228045 I-087 P.03/03 F-488

a most stressful position. He does so with respect and an ease of manner which is unusual to say the least.

Magistrate Judge Larson meets all the standards of fairness and adherence to the law that we look for in all of our federal judges. He has a well-deserved outstanding reputation.

I am making this request on behalf of my law firm and my colleagues who hold Judge Larson in the highest esteem. I ask that his nomination be confirmed.

Very truly yours,

NASATIR, HIRSCH, PODBERESKY
& GENEGO, APLC

By: Michael D. Nasatir
MICHAEL D. NASATIR

MDN:cjb

01-23-06 01:08pm From-LEWIS BRISBOIS BISGARD & SMITH LLP 9098853187 T-399 P.01/01 F-857

LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

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DIRECT DIAL: 909.381.7164
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January 23, 2006

FILE NO
JMP

Senator Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

VIA U.S. MAIL
and
FACSIMILE to: 202/224-3954

Re: Magistrate Judge Stephen G. Larson
United States District Court - Central District of California

Dear Senator Feinstein:

I was very pleased to learn that President Bush nominated Magistrate Judge Stephen G. Larson for appointment as a United States District Court Judge. The purpose of this letter is to express my whole-hearted support of Judge Larson for this appointment.

As a practicing trial lawyer in the Riverside/San Bernardino area of Southern California, I have appeared before Judge Larson on numerous occasions, and am familiar with his reputation and judicial service from a first hand basis, as well as from my interaction with other attorneys.

In my opinion, Magistrate Judge Larson meets all of the standards of fairness, objectivity, and a willingness to follow and apply the law that is desired for a federal judicial officer.

Judge Larson has an excellent reputation in our community, not only because of his fairness on the bench, but his involvement in the community, including teaching law related classes at a local college Judge Larson enjoys the widespread support of criminal prosecutors and criminal defense attorneys, as well as civil litigators on behalf of the plaintiff and the defense.

It is my request and suggestion that the nomination of Judge Larson be approved.

Sincerely,

John M. Porter of
LEWIS BRISBOIS BISGAARD & SMITH LLP

JMP:vb

Feb-02-06 08:36 From-STATE COURT OF APPEAL +8092480346 T-012 P.02/03 F-235

Court of Appeal
FOURTH DISTRICT, DIVISION TWO
2203 TWELFTH STREET
RIVERSIDE, CALIFORNIA 92501

CHAMBERS OF THE
PRESIDING JUSTICE
MANUEL A. RAMIREZ

PHONE: (951) 248-0301
FAX: (951) 248-0346

February 1, 2006

The Honorable Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington D.C. 20510

Re: United States Magistrate Judge, Stephen G. Larson, Judicial Nominee
United States District Court, Central District, Eastern Division

Dear Senator Feinstein:

I am writing on behalf of United States Magistrate Judge Stephen G. Larson. It has recently come to my attention that President Bush has nominated Magistrate Judge Larson to become the next District Court judge for the Central District Court of California, Eastern Division. I am personally well acquainted with Judge Larson's abilities and qualifications. It is, therefore, with a great deal of pleasure that I write and urge you to vote for the confirmation of Magistrate Judge Larson as a United States District Court judge.

I am extremely familiar with the background of the candidate and all aspects of Judge Larson's current work. I know Judge Larson to be sincere, intelligent, conscientious, and hardworking. Moreover, he is blessed with good judgment, common sense, and the judicial demeanor and temperament required to discharge the duties, functions, and responsibilities of a United States District Court judge. His current work is exemplary and reflects a keen respect and passion for the rule of law.

In view of the fact that Judge Larson has already submitted his resume and relevant background information, I do not believe I need to elaborate at great length about his outstanding qualifications. He is, in short, known in our legal community for his dedication and integrity, as well as his commitment to working to improve our administration of justice system.

In my opinion, and without qualification, Judge Larson is uniquely and eminently qualified to be a United States District Court judge.

If there is any further information that may be desired, please do not hesitate to contact me.

With my best personal regards and good wishes, I am

Respectfully yours,

Manuel A. Ramirez
Presiding Justice

MAR:seh

cc: Magistrate Judge Stephen G. Larson

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ATTORNEYS AT LAW
3750 UNIVERSITY AVENUE, SUITE 220
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ANDREW L. ROTH
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January 20, 2006

The Hon. Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

FACSIMILE: 202-228-3954

Re: **Stephen G. Larson**, Nominee, U. S. District Court, Central Division of California

Dear Senator Feinstein:

I am a life-long progressive Democrat, have been practicing law in Riverside, California, for twenty six years, am past-president of the Riverside County Bar Association and a member of the Federal Bar Association. I have served four years on the State Bar Judicial Nominees Evaluation Commission, vetting judicial nominees for the Governor. I have done both criminal prosecution and defense, have been a city attorney and currently represent plaintiffs in employment and civil rights matters. I understand that President Bush has sent Magistrate Judge Stephen G. Larson's nomination to the Senate Judiciary Committee, and am writing to urge his confirmation.

When Judge Larson came to this community as an unknown five years ago, many of us were skeptical – we knew only that he was a young, Republican prosecutor, who appeared at first to lack the life experience to make a good, well-rounded judge. But he immersed himself in the community and we quickly got to know and respect him. He now has a well-earned reputation as an exemplary bench officer and enjoys widespread, bi-partisan support throughout our community.

Having had the pleasure of appearing before Judge Larson and having come to know him through our mutual involvement in the legal community, I can honestly say that he is one of the finest – perhaps the finest – judicial officer I have appeared before. The degree of respect afforded him in this legal community is demonstrated by the fact that attorneys on both sides of the table, in criminal and civil matters, routinely stipulate to him for trial as well as settlement proceedings.

In addition to being extremely bright, hard-working and pragmatic, Judge Larson has an obvious love of and respect for the law, our judicial system and legal precedent. He has a tremendous respect for individual civil rights and an understanding of human frailty. He is patient and respectful of attorneys and litigants; has no personal agenda; is thoughtful, intellectually honest, fair, trustworthy and courageous; and, as a bonus, has a great sense of humor. In short, he has all the qualities we hope for in a jurist.

Without any reservation, I urge his confirmation.

Sincerely,

Diane Catran Roth

PETE SESSIONS
32ND DISTRICT, TEXAS

COMMITTEE ON RULES

COMMITTEE
ON THE BUDGET

COMMITTEE ON
FINANCIAL SERVICES
(ON LEAVE)

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CHAIRMAN

Congress of the United States
House of Representatives

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February 1, 2006

The Honorable Arlen Specter
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-0001

Dear Chairman Specter:

I write regarding the nomination of John F. Clark for the position of Director of the U.S. Marshals Service. Mr. Clark, a 22-year veteran of the U.S. Marshals, has a truly impressive record of service.

He first served as Deputy U.S. Marshal in San Francisco, CA, and then in San Jose, CA; Richmond, VA; and Alexandria, VA. During these assignments, he gained extensive field experience. He later served in the Special Operations Group for seven years, further honing his skills.

Throughout his tenure with the U.S. Marshals, Mr. Clark held numerous senior management positions, including Chief of the Internal Affairs Division and Chief of the International Fugitive Investigations Division. In November 2002, President George W. Bush appointed him as U.S. Marshal for the Eastern District of Virginia. Then, in August 2005, President Bush designated Mr. Clark to serve as Acting Director of the U.S. Marshals Service.

Mr. Clark has demonstrated great success in leadership for the U.S. Marshals. Moreover, he possesses the experience, drive, and vision that make him an outstanding nominee for Director. While I understand the Senate Judiciary Committee faces a busy schedule this year, I urge you to begin confirmation proceedings for Mr. Clark. As a highly qualified and widely supported candidate, I anticipate a smooth and expeditious confirmation process.

Thank you for your time and consideration. If you have any questions, please do not hesitate to contact me or Kate Gregg of my staff at 202.225.2231. With warm regards I remain,

Sincerely,

Pete Sessions

Pete Sessions
Member of Congress

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01/26/2006 4:05PM

GROVER TRASK
DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
4075 MAIN STREET, FIRST FLOOR
RIVERSIDE, CALIFORNIA 92501
951/955-5400

JAY E. ORR
ASSISTANT DISTRICT ATTORNEY
ADMINISTRATIVE DIVISION

ROD A. PACHECO
ASSISTANT DISTRICT ATTORNEY
WESTERN DIVISION

SUE F. STEDING
ASSISTANT DISTRICT ATTORNEY
EASTERN DIVISION

RANDALL K. TAGAMI
ASSISTANT DISTRICT ATTORNEY
SOUTHWEST DIVISION

January 26, 2006

The Honorable Senator Dianne Feinstein
Senate Judiciary Committee
224 Dirksen Bulding
Washington, DC 20510
Fax: (202) 228-3954

RE: Magistrate Judge Stephen G. Larson, Federal Judicial Appointment

Dear Senator Feinstein:

It is my understanding that President Bush has forwarded the nomination of Magistrate Judge Stephen "Steve" G. Larson to the Senate Judiciary Committee for consideration. It is my privilege to recommend him for such appointment.

As a 32-year veteran prosecutor and Riverside County District Attorney, I have had the opportunity through my statewide activities to meet some outstanding judges. Steve Larson is one of those judges. He has committed his career to public service and meets all the standards of fairness, intelligence, hard work, and adherence to the law that we expect of our federal judges. Judge Larson has been a Magistrate Judge in California since 2000 and has an exemplary reputation and bipartisan support.

I wholeheartedly recommend that Magistrate Judge Stephen G. Larson's nomination be confirmed.

Sincerely,

GROVER TRASK
District Attorney

RIVERSIDE DA Fax:951-955-5469 Jan 26 2006 13:19 P.02

STATEMENT OF OHIO SENATOR GEORGE VOINOVICH TO THE COMMITTEE ON THE JUDICIARY ON THE NOMINATION OF JUDGE JACK ZOUHARY TO SERVE AS A JUDGE OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

February 15, 2006

Mr. Chairman and members of this Committee, thank you for allowing me to speak on behalf of a very deserving attorney and judge from the state of Ohio. I am here to express my strong support for Judge Jack Zouhary, whom the President has nominated to serve on the U.S. District Court for the Northern District of Ohio.

I welcome this Committee's review of Judge Zouhary, and I believe that you will come to the same conclusion that I have regarding Judge Zouhary's qualifications to serve as a federal judge; Judge Zouhary is well qualified and should be confirmed by the Senate.

Judge Zouhary has a distinguished and impressive record as a lawyer, community leader and, most recently, as a judge on the Lucas County Court of Common Pleas. Judge Zouhary has deep roots in Northwest Ohio, and he has outstanding academic and professional credentials.

In 1969, Judge Zouhary graduated from Toledo's DeVilbiss High School, where he was Valedictorian. Judge Zouhary is a graduate of Dartmouth College, where he obtained his B.A., *Cum Laude* in 1973. After attending Dartmouth, Judge Zouhary returned to northwest Ohio to attend the University of Toledo Law School, where he was an Associate Editor of the *University of Toledo Law Review*.

Upon his graduation from the University of Toledo Law School in 1976, Judge Zouhary joined the Toledo firm of Robison, Curphey & O'Connell as an associate. He rose to become a partner in the firm continuing until 1999. As a practicing attorney, Judge Zouhary spent most of his legal career representing individuals and businesses located or operating in northwest Ohio. As a result of his practice, Judge Zouhary has extensive civil trial experience. Judge Zouhary has practiced in state and federal courts at all levels, including the Ohio Supreme Court and the United States Supreme Court. He contributed to the advancement of continuing legal education by speaking before local, state and national groups on litigation, ethics and professionalism topics.

In 2000, Judge Zouhary joined S.E. Johnson Companies, Inc., a Maumee-based highway contracting and aggregate company, as Senior Vice President, General Counsel and Secretary until it was sold. Judge Zouhary was most recently affiliated with Fuller & Henry, Ltd. In February 2005, Governor Bob Taft appointed Jack Zouhary to fill a judicial vacancy on the Lucas County Common Pleas Court, where he continues to serve.

As a result of Judge Zouhary's fine academic and professional achievements, I am not surprised that the American Bar Association unanimously rated Judge Zouhary as "well qualified," the highest rating it can give to a judicial nominee.

In Judge Zouhary, I believe this Committee has before it not only a nominee who has the capability to be an excellent judge, but also a nominee with great character. I think it is important to get a sense of any judicial nominee's character. Judge Zouhary is a proud first-generation American. His father arrived at Ellis Island in the 1920s as a teenager, and later opened a corner grocery store. Judge Zouhary was raised with the strong work ethic and appreciation for the American dream shared by the descendants of so many immigrants. Success stories among the families of first-generation Americans like Judge Zouhary are familiar to many of the descendants of immigrants, and they show that the American Dream is still alive and well.

Finally, Judge Zouhary is a proud husband and father. Judge Zouhary and his wife, Kathleen, who is also a lawyer and general counsel of St. Luke's Hospital in Maumee, Ohio, have been married for over 25 years. Judge Zouhary and his wife are the proud parents of two daughters, Katie Marie, a Yale University graduate, and Alexis, a student at the University of Notre Dame.

Judge Zouhary's legal credentials are not the only reasons I support his nomination. In an age where I believe too many people do not take the time to become active members of their communities, Judge Zouhary has been a community leader. Judge Zouhary has been a long-time member of the Sylvania and Toledo Rotary Service Clubs and has served in leadership roles in his family church and schools, including St. Elias Orthodox Church, Ladyfield Catholic School, Notre Dame Academy, St. Pat's Soup Kitchen and Junior Achievement.

Involvement in one's community is important. We need judges who not only have exceptional legal skills, which Judge Zouhary certainly has, but also who recognize how the law impacts individuals and communities. Judge Zouhary has this understanding.

In reviewing Judge Zouhary's academic and professional record it is clear that Judge Zouhary is well qualified to serve as a federal district court judge on the U.S. District Court for the Northern District of Ohio, and I look forward to this Committee's review of his nomination.

Thank you.

###

SENATOR WARNER'S STATEMENT
TO THE JUDICIARY COMMITTEE ON THE NOMINATION OF
JOHN CLARK TO SERVE AS DIRECTOR OF THE UNITED
STATES MARSHALS SERVICE
FEBRUARY 15, 2006

Chairman Specter, Senator Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, I am pleased today to introduce a long-time Virginian - John Clark - who has been nominated to serve as the Director of the United States Marshals Service. John is joined at today's hearing by his wife, Lucy.

As you know, the U.S. Marshals Service is the nation's oldest federal law enforcement agency. When originally created in 1789, President Washington nominated 13 U.S. Marshals for Senate confirmation.

Today, more than 200 years later, America has 94 U.S. Marshals, and the Marshals service employs more than 4,800 deputy Marshals and employees.

The Director of the Marshals Service serves as the agency's head. The Director's job is not only to effectively manage the agency's nearly 5,000 employees, but also to ensure that the Marshals Service continues to accomplish its many day-to-day missions - from courthouse security, witness security; fugitive investigations; and prisoner detention services.

The Director of the Marshals Service, without a doubt, has a difficult job. This already tough job was made even more challenging in the post 9/11 world - particularly with respect to the unique security challenges that terrorism-related cases present.

But, there is no question in my mind that John Clark is up to the task.

For the past 6 months, Mr. Clark has had the privilege of serving as the Acting Director of the Marshals Service. His past experience has served him well in this position.

Prior to taking over as the Acting Director, Mr. Clark worked for nearly 3 years as the United States Marshal for the Eastern District of Virginia - the very district that prosecutes most of America's high profile terrorism-related cases, such as the case of Zacarias Moussaoui. How fortunate we were in Virginia to have someone with John Clark's experience serving as our Marshal during these critical times.

In fact, it was precisely because of his more than two decades of experience in the Marshals Service and his stellar reputation as a law enforcement official that Senator Allen and I were pleased to recommend John Clark to President Bush in 2001 for the position of U.S. Marshal for the Eastern District of Virginia.

Soon after his nomination, the Senate's Judiciary Committee reported John Clark's nomination to the full Senate where he was later unanimously confirmed.

In my view, this Committee and the full Senate should once again give broad support to this outstanding nominee. John Clark is eminently qualified for this position, and I am privileged to offer this Committee my highest recommendation with respect to this outstanding nominee.

NOMINATIONS OF NORMAN RANDY SMITH, OF IDAHO, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; AND PATRICK JOSEPH SCHILTZ, OF MINNESOTA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA

WEDNESDAY, MARCH 1, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 4 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Tom Coburn presiding.

Present: Senator Coburn.

OPENING STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. The Committee will come to order.

Today we will have a confirmation hearing for two of the President's judicial nominees. I hope we can get your nominations voted out of the Committee shortly and through the Senate as fast as possible.

We have no Ranking Member here as yet, so if they show up, we will allow them an opportunity to make a comment.

We are very privileged to have our distinguished colleagues here from the great State of Idaho as well as Senator Coleman from the State of Minnesota. Welcome, and we will start with Senator Craig.

PRESENTATION OF NORMAN RANDY SMITH, OF IDAHO, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. LARRY CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Well, Mr. Chairman, thank you very much for the courtesy that you have extended to us. I say that of the Chairman of the full Committee, Senator Specter. These hearings had been canceled because of scheduling conflicts, and when Senator Crapo and I met with him on the floor earlier in the day, he recognized that we had nominees who had flown literally the distance across our Nation to be here today, and recognizing that—and I think the Committee record also ought to show that I then appealed to you. Your schedule was tight, and you adjusted your schedule accordingly, and that is truly appreciated.

So I do appreciate the opportunity to appear before the Committee today to introduce Randy Smith, who has been nominated to fill the Ninth Circuit seat in Boise, Idaho, being vacated by Judge Stephen Trott.

Randy Smith comes to you with considerable judicial experience. He has been a State district judge in Idaho's Sixth Judicial District for a decade. He has served as a felony drug court judge and a pro tem Justice for the Idaho Supreme Court and the Idaho Court of Appeals. He has a wealth of experience in both the practice of teaching law and he has been an active member of the Bar Association and other professional associations, Mr. Chairman.

He has a life beyond law as well, as most of our judges do. He is deeply involved in his community and his State. He has held positions of leadership and responsibility in a wide variety of organizations. All of these things you can see for yourself in Judge Smith's long resume.

What you cannot see there and what I would like to share with you is a reputation that Randy Smith has earned in the State of Idaho amongst his neighbors, his peers, and the people he serves. I hope today you will see what Idahoans have come to like and respect in Judge Smith. He is a fine man, the kind of person that you would want to have as a Scout leader for your kids. He is a principled and a knowledgeable community citizen, the kind of person you would want to have on your team or on your board. He is a thoughtful and objective judge, the kind of judge you would trust to render an impartial and well-reasoned decision.

Men and women come to the bench by many different roads, including academia and the elected public office. Randy Smith's real-world experiences give him a perspective and skill set that will be extremely valuable on the appellate court. His character and competence fits him to advance to this important position, and Idahoans are confident he will be a tremendous asset to our region and to the Nation as a judge on the Ninth Circuit Court of Appeals.

Finally, let me say a few words about the history of this particular seat, Mr. Chairman, because it may well be discussed before the Committee. As the Committee well knows, there are geographic traditions attached to some court seats. In this case, this seat's pedigree is very mixed. In 70 years, it has moved from Oregon to Washington State to California and to Idaho. Although Judge Trott, the judge that is going senior, worked in California during his career, he was nominated to the seat as a Virginian and he worked from Boise, Idaho, for all of the full 19 years of his tenure. So that is a rather mixed approach to get to where we need to get, but it clearly explains what some may question. In fact, the seat has resided in Idaho longer than it has resided in California.

I do not believe any tradition was violated within President Bush nominated an Idahoan to this seat, and I support his decision to maintain the status quo by keeping the seat in Idaho. I know the California Senators have expressed concern as to why this is, and that is why I speak to the history of this seat of the Ninth Circuit.

Again, Mr. Chairman, and to the full Committee, thank you very much for allowing these hearings to go forth this afternoon.

Senator COBURN. Thank you, Senator Craig.

I know that Senator Coleman is here, and you were supposed to be sitting in the Chair for me. I hope somebody is doing that. I would feel rest assured that that has been taken care of.

Senator COLEMAN. I think they took care of that, Mr. Chairman. Thank you.

Senator COBURN. Senator Crapo?

PRESENTATION OF NORMAN RANDY SMITH, OF IDAHO, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. MIKE CRAPO, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAPO. Thank you very much, Mr. Chairman. I want to join with Senator Craig in personally thanking you for accommodating and changing your schedule so that we could accommodate Judge Smith, who has literally traveled across the country to be here and faced the prospect of having the hearing canceled had you not been willing to do that. So thank you. I also thank the Chairman of the full Committee, Senator Specter, for being so willing to work with us to accommodate these changes.

Mr. Chairman, I am pleased to also join with Senator Craig in introducing Randy Smith. On December 16, 2005, President Bush nominated Judge Smith to fill the seat on the Ninth Circuit Court of Appeals that was, as Senator Craig said, vacated by Judge Stephen Trott of Idaho who took senior status. And it is a pleasure for me to be able to be here, not only because we have an outstanding Idahoan, but because Judge Smith is a personal friend of mine whom I have known for many years. And I could not be more happy to sit before this Committee to recommend and support any nominee from the State of Idaho than Randy Smith for this position.

Since 1996, Judge Smith has served as district judge for the Sixth Judicial District of the State of Idaho, and it is my understanding that the American Bar Association has given him a unanimous "well qualified" rating for his nomination to the Ninth Circuit Court of Appeals.

Randy Smith earned both his undergraduate and law degrees from Brigham Young University. Throughout his career, both in private practice and as a judge, Randy Smith has continued to be a student and teacher of the law. He taught courses in business law and tax law at Brigham Young and later at Boise State University. Since 1993, he has served on the faculty at Idaho State University teaching legal environment and business law.

Prior to becoming a judge, Randy spent more than 15 years in private practice gaining significant experience before both the State and Federal courts. Judge Smith is a member of the bar of the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the U.S. District Court for the District of Idaho, the U.S. Tax Court, the Idaho Supreme Court, and all courts in Idaho.

In addition to his current position as district judge in Idaho, Judge Smith also serves from time to time as pro tem Justice on the Idaho Supreme Court, as a Justice of the Idaho Court of Appeals, and as a temporary judge in the district courts throughout the State of Idaho. He mediates approximately 100 Federal and State civil cases each year.

In 2004, Judge Smith received the George G. Granada, Jr., Award presented by the Idaho State Judiciary in recognition of demonstrated professionalism as an Idaho trial judge and for motivating and inspiring his colleagues on the bench by his character and his actions. In 2002, he received the Outstanding Service Award from the Idaho State Bar Board of Commissioners.

Judge Smith is also a member of the Board of Directors and is the Past President of the Idaho State Civic Symphony. It is clear that the President has nominated a well-qualified judge in Randy Smith to fill this vacancy in the Ninth Circuit, and I urge this Committee to approve the nomination.

Before I conclude, Mr. Chairman, I have a lot of material as well, as Senator Craig has presented, about the history of this seat. But I think that it is very clear that the President violated no precedent and, in fact, followed the best precedent that could be taken from the history of this seat in nominating a candidate from Idaho, and certainly with such an outstanding and well-qualified candidate as Judge Smith, we should proceed rapidly with this nomination.

Thank you.

Senator COBURN. Senator Coleman?

PRESENTATION OF PATRICK JOSEPH SCHILTZ, OF MINNESOTA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA, BY HON. NORM COLEMAN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator COLEMAN. Thank you, Mr. Chairman, and I do hope that there is somebody covering and presiding over the Senate right now. My staff assures me that was taking place.

Senator CRAPO. You would have heard about it if there wasn't.

Senator COLEMAN. The BlackBerry would have been going off.

Mr. Chairman, I also want to express my appreciation for your willingness to step forward to have this hearing. The Schiltz family traveled from Minnesota today. It is Mrs. Schiltz's birthday, it is his son's birthday, and they are here, and I am thrilled to have this opportunity to present them and introduce them to you and the Committee.

This is the first opportunity I have had to be involved as a U.S. Senator in recommending a candidate for a position as a district judge. And I am just thrilled t have been able to work with somebody of the extraordinary talent and character and integrity of Patrick Schiltz. He brings broad legal experience and remarkable qualifications to the position as U.S. District Judge for the District of Minnesota.

Mr. Schiltz is a native of Duluth, Minnesota, and I am sure this is a proud day for the people of that city and the College of St. Scholastica, where he graduated. The Duluth view from the high bluff above Lake Superior is one of the Nation's most amazing and beautiful, incredible landmarks. I think the lake is the world's largest body of fresh water, so as Mr. Schiltz steps forward to take on this big job, he knows what big really is.

After graduating from St. Scholastica, Mr. Schiltz attended Harvard Law School, where he graduated magna cum laude and was editor of the Harvard Law Review. He served as a law clerk to U.S.

Supreme Court Justice Antonin Scalia for 2 years. In fact, Mr. Chairman, he first clerked for Judge Scalia on the D.C. Circuit Court of Appeals, and then when Judge Scalia became Justice Scalia, he was asked to clerk for him during his first year as a United States Supreme Court Justice.

Mr. Schiltz then joined with the Faegre and Benson law firm, Minnesota's second largest law firm. He has represented a wide variety of clients, including the Evangelical Lutheran Church in America, the Archdiocese of St. Paul in Minneapolis, the Star Tribune, the National Football League, the Minnesota Vikings, and the Minnesota Timberwolves. In Minnesota, there aren't any more important clients than the Lutherans and the Minnesota Vikings.

[Laughter.]

Senator COLEMAN. Mr. Chairman, I think we all know that the very best way to learn a subject is to teach it. In 1995, Mr. Schiltz joined the faculty of Notre Dame Law School, where he became a nationally recognized scholar in the areas of legal ethics and appellate procedure. As a reporter to the Advisory Committee on the Federal Rules of Appellate Procedure, and as the primary co-author of the leading treatise on those rules, Mr. Schiltz is a preeminent expert on appellate procedure in the United States.

In July 2000, he became the founding associate dean and interim dean of the University of St. Thomas Law School in St. Paul, Minnesota, where he played a significant role in many aspects of creating the new law school.

On December 14, 2005, President Bush nominated Mr. Schiltz to serve as United States District Judge for the District of Minnesota. This nomination will replace retiring Judge Richard Kyle who served as our senior judge with passion, dignity, and integrity.

The authors of the Constitution vested the President with the power to make nominations to the Federal judiciary. Federal judges receive a lifetime appointment and, therefore, should be individuals of high intellect with the appropriate judicial temperament and finest character.

I take my constitutional responsibility to provide advice and consent very seriously, as all members of this Committee do. I am very supportive of Mr. Schiltz's nomination. He is clearly a nominee with high intellect, high character, the right judicial temperament and integrity. I encourage the Committee to do a thorough job of examining him, to then support his nomination, and then to forward the nomination to the full Senate.

I want to take this opportunity to congratulate Mr. Schiltz on his outstanding career and the willingness of him and his family, his wife, Elizabeth Rose Schiltz, and their four children, to step forward to provide public service in this important post.

Thank you, Mr. Chairman.

Senator COBURN. Thank you, Senator Coleman.

We realize there are many demands on your time. If you would care to stay, that would be fine. But, otherwise, we will excuse you, and we would ask our two nominees to come forward and be sworn in.

Raise your right hand. Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Judge SMITH. I do.

Mr. SCHILTZ. I do.

Senator COBURN. You may be seated.

The first nominee is Judge Norman Randy Smith, nominated to be a circuit court judge on the United States Court of Appeals for the Ninth Circuit. Judge Smith graduated from the Brigham Young University in 1974 and received his J.D. from BYU's J. Reuben Clark School of Law in 1977.

Following law school, Judge Smith joined the J.R. Simplot Company as a corporate attorney, and in 1981, he began a long association with the law firm of Merrill and Merrill, where his practice focused on corporate and insurance defense litigation. He later became a partner at the firm. He remained with Merrill and Merrill until his election to the Idaho bench in 1996 as a district court judge in Idaho's Sixth Judicial District. In 2004, he was made an administrative judge for that district.

While serving on the bench, Judge Smith has continued to contribute to the community in Idaho and to the legal profession in that State. He has taught as an adjunct professor at Idaho State University since 1984. Last year, he was named the Outstanding Teacher of the Year. Judge Smith has received a unanimous "well qualified" rating from the American Bar Association.

Second is Patrick Schiltz, nominated to be a district court judge for the District of Minnesota. Mr. Schiltz received his B.A. from the College of St. Scholastica in 1981 and his J.D. from Harvard Law School. He has had a distinguished legal career and will bring over 20 years of legal experience to the Federal bench.

Following law school, he served as law clerk to Justice Scalia during his last year on the United States Court of Appeals for the D.C. Circuit and his first year on the Supreme Court. Mr. Schlitz—Schiltz—I have a problem with that. That beer is not available anymore.

[Laughter.]

Senator COBURN. He has worked as a private practitioner at Faegre and Benson, LLP, from 1987 to 1995, serving as associate until becoming partner in 1993. More recently, he has made his mark in the legal profession as a scholar. He has served on the faculty of Notre Dame Law School from 1995 to 2000 and left to help found the University of St. Thomas School of Law. He currently holds the school's St. Thomas More Chair in law. He is recognized as an expert in the areas of legal ethics and appellate procedure. He is co-author of the recent editions of Wright and Miller's "Federal Practice and Procedure," the seminal treatise for litigators across the country.

In 1997, he was appointed by Chief Justice Rehnquist to serve as the reporter to the Advisory Committee on the Federal Rules of Appellate Procedure, a position he still holds. The American Bar Association gave Mr. Schiltz a unanimous "well qualified" rating.

Gentlemen, we welcome you to the Committee. We would be pleased to hear any statement that you care to make, and I would ask you to introduce your family and friends who are here for your hearing. I would ask you to limit your statement to 5 minutes.

Judge Smith?

STATEMENT OF NORMAN RANDY SMITH, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Judge SMITH. Thank you very much, Mr. Chairman. I appreciate very much you holding this hearing for us today, and I appreciate having the Committee have this hearing for us.

I am very appreciative to the President of the United States for presenting my nomination to the Committee, and I am very appreciative of those two wonderful Idaho Senators who introduced me here today. I have become friends with both of them, and I find them both to be strengths to Idaho and the best representatives we can have. I appreciate very much their effort on my regard.

I do have my cousin Dirk Smith here today. He has joined us. I know that it is often told to me that I should not start out with apologies, but I am going to have two.

The first that I apologize because, as I came in, somehow I have a cold, and that cold has left me a little bit under the weather, and I hope you—I apologize for that.

My second apology is for my wife, La Dean, who would be here. She felt this was very appropriate to come, but she is a teacher at the Hawthorne Junior High School in Pocatello, and her parents are very ill in Layton. We had to take one to the emergency room last weekend, and she thought, as their only daughter, she ought to be with them. So she apologizes for not being here and a part of this hearing.

Thank you very much. I have no other statement.

[The biographical information of Judge Smith follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   Norman Randy Smith

2. **Address: List current place of residence and office address(es).**

   Residence: Pocatello, Idaho

   Office Address: Bannock County Courthouse, 624 East Center, Room 310, P.O. Box 4165, Pocatello, Idaho 83205

3. **Date and place of birth.**

   August 11, 1949; Logan, Utah

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Married to La Dean Egbert Smith; Maiden name is Egbert.

   Junior High School Teacher with School District No. 25, 3115 Poleline Road, Pocatello, Idaho 83201

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   J. Reuben Clark School of Law, Brigham Young University, attended September 1974 through April 1977, Juris Doctorate Degree (April 1977)

   Brigham Young University, attended from October 1970 through April 1974, Bachelor of Science Degree (April 1974)

   Utah State University, attended September 1967 through May 1968, no degree earned.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   A. Employment

   2004 to present - State of Idaho (Idaho Sixth District Administrative Judge)
   1996 to present - State of Idaho (District Judge for the Sixth Judicial District)

1984 to present - Idaho State University (Adjunct Faculty)
1982 through 1995 - Merrill & Merrill, Chartered (Associate for two years, then Partner)
1979 through 1981 - Boise State University (Adjunct Faculty)
1977 through 1981 - J.R. Simplot Company (Associate and Assistant General Counsel)
1974 through 1977 - Brigham Young University (Accounting Instructor while attending school)
1976 - J.R. Simplot Company (Legal Intern during summer)
1976, 1975, 1974 - Pillsbury Company (Laborer during the summers)
1975 - Senator James A. McClure (R-Ida) (Intern during the summer)

B. Professional Organizations

2000 to 2002 - Idaho Law Foundation (member of Board of Directors)
1996 to present - Idaho District Judges Association (President 1998 to 2000; Vice President 1997 to 1998; Secretary/Treasurer 1996 to 1997)
1988 to present - American Inns of Court/Portneuf Inn (Chairman of Executive Committee 2004 to present)
1984 to 1995 - Idaho Association of Defense Counsel (President 1992-93; President Elect 1991-92; Secretary/Treasurer 1990-91; Board of Directors 1987-93)
1982 to present - Idaho Sixth District Bar Association (President 1994-95)

C. Other

1991 to 1996 - Eastern Idaho Development Corporation (Board of Directors throughout period; Treasurer 1991-95; Secretary 1995-96)
1991 to 1996 - Republican Party (Bannock County Chairman 1991-93; Idaho State Chairman 1993-96)
1984 to present - Gate City Rotary Club (Sergeant-at-Arms 1984-87; Board of Directors 1989-93; President Elect 1991-92; President 1992-93)
1984 to present - Idaho State Civic Symphony (Board of Directors throughout period; President 1990-93 and 1998-99)
1983 to 1996 - Bannock County Industrial Development Corporation (Secretary throughout period)
1982 to present - Juniper Hills Country Club (Stock owning member; Planning Committee member 2000-02)
1982 to present - Idaho State Bengal Boosters Association (Board of Directors 1990-96)
1980 to 1982 - Republican Party Precinct Committeeman
1977 to 1981 - Hillcrest Country Club (Stock owning member)
1977 to present - Boy Scouts of America (Scoutmaster, District Leader, Council Leader, Committee Chairman)
1974 to present - Church of Jesus Christ of Latter-day Saints (Officer and member)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Fellow of the American Bar Association (2005)

Outstanding Teacher of the Year (2004-05), presented by Idaho State University, College of Business, and inducted into Phi Kappa Phi Honor Society (at the request of the students for outstanding teaching)

Statesman of the Year (2005), presented by Idaho State University Pi Sigma Alpha Organization

George G. Granada, Jr. Award (2003), presented by the Idaho State Judiciary for demonstrated professionalism

Outstanding Service Award (2002), presented by the Idaho State Bar Association

Exceptional Performance Citation (1993), presented by the Defense Research Institute

American Jurisprudence award in Federal Taxation, presented by Brigham Young University (1976)

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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 (Idaho Delegate for National Conference of State Trial Judges – 1998-2002)

Idaho Bar Association

Idaho Law Foundation (Board of Directors 2000-02)

Idaho Sixth District Bar Association (President 1994-95)

Idaho District Judges Association (Secretary/Treasurer 1996-97; Vice President 1997-98; President 1998-2000)

American Inns of Court/Portneuf Inn (Chairman of Executive Committee 2004 to present)

Idaho State Judicial Council

Idaho State Supreme Court Administrative Conference

University of Idaho College of Law Visiting Committee

Idaho State University College of Business Visiting Committee (Chairman from October 2004 to present)

Idaho State Evidence Rules Advisory Committee

Idaho State Criminal Rules Advisory Committee

Small Lawsuit Resolution Act Committee (Chairman 2002 to present)

Idaho State Civil Rules Discovery Committee (Chairman 2004 to present)

Idaho Criminal Justice Commission

State of Idaho Task Force to Study Campaign Financing for Judicial Elections

United States Ninth Circuit Court of Appeals Judicial Conference Lawyer Representative (Member of Executive Committee 1991-95)

United States District Court for the District of Idaho Lawyer Representative

United State District Court for the District of Idaho Civil Justice Reform Act Committee for Idaho (Chairman of the Discovery, Motion and Pre-Trial Subcommittee)

Idaho State Tax Institute (Planning Committee 1977 to present)

Idaho Business Corporation and Nonprofit Corporation Act Committee

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Organizations probably active in lobbying

American Bar Association; Idaho Bar Association

All other organizations

Idaho District Judges Association; Idaho State Supreme Court Administrative Conference; American Inns of Court/Portneuf Inn; Idaho State Judicial Council; Idaho Law Foundation; Idaho State Civic Symphony Association; Idaho State Bengal Booster Association; Gate City Rotary Club; Brigham Young University Cougar Club; Boy Scouts of America; Church of Jesus Christ of Latter-day Saints; Juniper Hills Country Club; Idaho Sixth District Bar Association

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Idaho Supreme Court and all other Idaho courts (1977)
I continue to be a member of the Idaho State Bar, however my membership status was changed from "Active" to "Judge" when I became an Idaho District Judge.
United States District Court for the District of Idaho (1977)
United States Court of Appeals for the Ninth Circuit (1980)
Supreme Court of the United States (1981)
United States Court of Claims (1980)
United States Tax Court (1978)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Article on Criminal Sentencing in Idaho in The Advocate, October 2005 Issue, the official publication of the Idaho State Bar;

Article on the Small Lawsuit Resolution Act in The Advocate, September 2003 Issue, the official publication of the Idaho State Bar

Article entitled "Why I Do Not Let Jurors Ask Questions in Trials," University of Idaho College of Law Idaho Law Review, Volume 40, Number 3.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in excellent health.
My last physical examination occurred in September 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

January 1996 (appointed in November 1995 by Idaho Governor Phil Batt) to present – Idaho Sixth District Judge; I have thereafter been elected to continue in that office in 1998 and 2002. An Idaho District Judge has jurisdiction over all cases filed in the Idaho court system. However, district judges usually hear all felony cases, all civil cases with amounts plead in excess of $10,0000 (except divorces and estate matters), and appeals from all other cases. My term ends in December 2006, however I will be a candidate for reelection in March through May, 2006.

August 2004 to present - appointed Idaho Sixth District Administrative Judge

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

Ten Most Significant Opinions (not including any opinions in which I was reversed)

Farmers Insurance Company of Idaho v. Talbot, Ada County Case No. CVOC-98-01597D

Jacobson v. State Farm Mut. Auto. Ins. Co., Bannock County Case No. CVPI-97-00102B

Northwest Bec-Corp v. Home Living Service, Bannock County Case No. CVOC99-01127

Pixton Petroleum Products, Inc. v. Shoshone Bannock Tribal Enterprises, Inc., Bannock County Case No. CVOC99-00444B

State v. Vialpondo, Bannock County Case No. CRFE00-00307B

Willie v. Board of Trustees, Oneida School District No. 351, et al., Oneida County Case No. CV-99-00050

Karlson v. Harris, Bannock County Case No. CVPI98-00041B

Horne v. Idaho State University, Bannock County Case No. CVOC01-01975B

Boyer v. State, Bannock County Case No. CRMD02-02034

Huyett v. Idaho State University, Bannock County Case No. CVOC02-01370B

I also note that I had significant input into writing the following decisions by the Idaho Court of Appeals and the Idaho Supreme Court, though I only concurred in the decisions and/or the majority opinion in such cases:

Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct.App. 2004)

Uranga v. Federated Publications Inc., 138 Idaho 550, 67 P.3d 29 (2003)

State v. Charpentier, 131 Idaho 649, 962 P.2d 1033 (1998)

Summary of reversals and/or affirmations with significant criticisms

Foster v. Traul, ---P.3d ---, 2005 WL 1692955, Idaho , Jul 21, 2005
Patient brought claims for medical negligence and lack of informed consent against the anesthesiologist, the anesthesia medical practice, the nurse anesthetist, and the hospital. I struck the affidavit of the Plaintiff's expert, because it lacked foundation (under Idaho law) and improperly relied on an inadmissible report of the prelitigation screening panel. I then entered summary judgment as to both claims and as to every party. While affirming the medical negligence claims against all of the Defendants and the lack of informed consent claim against the hospital, the Idaho Supreme Court (in a unanimous decision) reversed as to the lack of informed consent claims against the anesthesiologist and the anesthesia medical practice. The Court found that the Defendants had never challenged that claim in the motion and therefore summary judgment was inappropriate. The Defendants have asked for a rehearing on appeal.

Robison v. Bateman-Hall, Inc., 139 Idaho 207, 76 P.3d 951, (2003)
An employee of a subcontractor on a roofing project brought a third-party personal injury action against the premises owner and the contractor, who hired the employee's employer. The employee hit his head on a sprinkler pipe, while trying to access the building's roof and fell fifteen to eighteen feet to a concrete floor. I granted summary judgment to the premises owner and contractor, because I found that they were excluded from third party liability under the recent amendments to the Idaho Worker's Compensation statute, Idaho Code § 72-223. The Idaho Supreme Court held (in a 3-2 decision) that the recently amended Idaho Code § 72-223 must be read in harmony with prior case law decisions and refused to grant the premises owner such an exclusion.

Shane v. Blair, 139 Idaho 126, 75 P.3d 180 (2003)
Patient brought a medical malpractice action against his surgeon, alleging negligence in performing a spinal surgery. I struck the affidavits of the Plaintiff's experts for lack of foundation under Idaho law and granted summary judgment to the surgeon. The Idaho Supreme Court (in a unanimous decision) reversed the decision, finding that a Utah

surgeon could familiarize himself with the applicable Idaho standard of care by being previously referred patients from Idaho and by discussing previous surgery cases with Pocatello surgeons. The Court then held that the Utah surgeon could thereafter familiarize another expert with the applicable Idaho standard of care.

Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001)
Multiple county officials, mayors, and school district trustees brought an action against the Idaho Secretary of State and county, city, and school clerks, seeking to enjoin the application of the Idaho Term Limits Act of 1994 (enacted by initiative) and to declare that it was in violation of the Idaho Constitution and the United States Constitution. I granted injunctive relief to those plaintiffs (who might run in an election before the matter was reviewed on appeal by the Idaho Supreme Court) and granted summary judgment under the Idaho Constitution, finding that the Act infringed upon the right of suffrage. The Idaho Supreme Court (in a unanimous decision) reversed the decision, holding that the right to hold office was not encompassed in the right of suffrage. However, the Court did affirm my decision as to an infringement of equal protection rights.

Morrison v. Young, 136 Idaho 316, 32 P.3d 1116 (2001)
Plaintiff brought suit against his sister to return real property he deeded to her as part of an oral agreement to reconvey the property to him, once the threat of a suit against the Plaintiff for delinquent child support had passed. I granted summary judgment to the Defendant, holding that the transfer of property to avoid an obligation of paying past and future child support was against public policy and should not be enforced by the Court. The Idaho Supreme Court (in a 4-1 decision) found that the whole agreement (including the deed) was against public policy and set aside the deed (returning the property to the Plaintiff).

Perkins v. U.S. Transformer West, 132 Idaho 427, 974 P.2d 73 (1999)
Employee filed suit against her employer for unlawful discrimination. After a jury trial, the jury found that the employer paid the employee less than her male counterparts, only one of the four alleged claims for discrimination. Judgment was entered against the employer. I then awarded costs and attorney fees to the Plaintiff. The Idaho Supreme Court (in a unanimous decision) vacated the award of attorney fees and remanded the case for further determination, because there was insufficient record on appeal that I had considered the factors under Rule 54(c)(3) of the Idaho Rules of Civil Procedure. (The hearing in which I considered those factors was not presented to the Court)

State v. Nielsen, 131 Idaho 494, 960 P.2d 177 (1998)
The Defendant was acquitted by reason of insanity in 1972 for the murder of his girlfriend. He was thereafter committed to a state mental institution. The Defendant then petitioned for a conditional release, alleging that he was no longer mentally ill and did not fit the criterion for civil commitment. I denied the petition, based on prior Idaho Supreme Court precedent. Such precedent had struck parts of the Idaho civil

commitment statutes, following *Foucha v. Louisiana,* 504 U.S. 71 (1992). The Idaho Supreme Court (in a unanimous decision) reversed, concluding that some parts of the civil commitment statute were yet viable.

Significant opinions on substantive federal or state constitutional issues

As noted above, many of the opinions previously discussed addressed substantive federal or state constitutional issues. I have no additional opinions to report.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

1980 – Republican Precinct Committeeman (elected)
1991-93 – Bannock County Republican Party Chairman (elected)
1993-96 – Idaho State Republican Party Chairman (elected)

17. **Legal Career:**

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

1. **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;**

No

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

No

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

State of Idaho, Sixth Judicial District, 624 East Center, Room 310, Pocatello, Idaho 83205 - serve as Administrative District Judge (2004 to present) and District Judge (1996 to present)

J. R. Simplot Company, One Capitol Center, 999 Main Street, Suite 1300, P.O. Box 27, Boise, Idaho 83707 – served as Intern (1976) and Associate/Assistant Counsel (1977 to 1982);

Merrill & Merrill, Chartered, 109 North Arthur Avenue, P.O. Box 991, Pocatello, Idaho 83204 – served as Associate (1982 to 1984) and Partner (1984 to 1995);

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

While at the J.R. Simplot Company, I served as a corporate attorney, generally charged with supervising outside legal counsel in the defense of the company; general legal corporate work of drafting contracts, collections, advising the company officers on all areas of the law, reviewing and settling claims against the company, and dealing with the Internal Revenue Service as to corporate tax problems. I also represented the J.R. Simplot Company in litigated hearings before the Idaho Public Utilities Commission.

While at Merrill & Merrill, Chartered, I was generally involved in corporate and insurance defense litigation (crop liability litigation, asbestos litigation, corporate litigation, tort litigation) and corporate, probate, and estate planning.

Since 1996, I have served as an Idaho District Judge and as the Administrative District Judge since 2004.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My former clients were generally corporate clients, insurance companies, and defendants being defended by insurance companies. I also assisted clients in business planning and estate planning. I did not specialize in my legal practice.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I rarely appeared in court while employed by the J.R. Simplot Company (1976-81). I did appear before the Idaho Public Utilities Commission two to four times per year.

I appeared in court frequently while working at Merrill & Merrill, Chartered (1982-95).

2. **What percentage of these appearances was in:**
   (a) federal courts; 40%
   (b) state courts of record; 55%
   (c) other courts. 5%

3. **What percentage of your litigation was:**
   (a) civil; 99%
   (b) criminal. 1 %

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   I would estimate that forty cases were tried to verdict or judgment (including summary judgment), rather than settled. I estimate that I was the associate counsel in five of those cases. Otherwise, I was chief counsel or sole counsel.

5. **What percentage of these trials was:**
   (a) jury; 80%
   (b) non-jury. 20%

18. **<u>Litigation</u>: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

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

1. *In Re: Grand Jury, et al.,* 1976 WL 3826 (9th Circuit)

The most significant case, upon which I worked as an attorney, was this federal tax fraud case against the J.R. Simplot Company, Simplot Industries, Inc., and their owner and founder, J.R. Simplot. I was not the trial counsel. However, I was charged with assisting in the research and writing for trial counsel. I was also charged with negotiating the settlement of this case with the Internal Revenue Service and arranging for the audit of company records to settle the case. The litigated issue involved whether Internal Revenue Service agents could assist the grand jury in taking grand jury testimony and then later testify as witnesses before the grand jury. I represented the Simplot defendants in this case from August 1977 until it was settled in 1980. The case was litigated in the United States District Court for the District of Idaho (Judge Ray McNichols and Judge Andrew Houk presiding) and then appealed to the United States Ninth Circuit Court of Appeals (Judges Hufstedler, Choy, and King, District Judge presiding). The Ninth Circuit held that the actions of the Internal Revenue Service agents were inappropriate. Trial counsel (with whom I worked) for the Simplot entities was Jess B. Hawley, Hawley Troxell Ennis & Hawley, P.O. Box 1617, Boise, Idaho 83701, and telephone (208) 344-6000. The Internal Revenue Service was represented by the Idaho U.S. Attorney's office.

2. *Galbraith v. Vangas, Inc.,* 103 Idaho 912, 655 P.2d 119 (Ct.App.1982)
In 1980, a homeowner brought suit against my client, Vangas, for negligently installing a water heater in 1961. The heater exploded in 1979 destroying the Plaintiff's home and personal property. The Idaho Seventh District Court (Judge H. Reynold George) granted summary judgment to Vangas, because the action had not been commenced within three years of the improper installation. The Idaho Court of Appeals reversed, holding that the statute of limitations did not begin to run until some damage occurred to the homeowner's property. I argued the case on appeal. Judges Jesse Walters, Roger Swanstrom, and Don Burnett heard the appeal. Dale P. Thompson of Rexburg, Idaho (present address unknown) represented Galbraith. Gary T. Dance, current address at Moffatt, Thomas, Barrett, Rock & Fields, Chtd., P.O. Box 817, Pocatello, Idaho 83204-0817, and telephone (208) 233-2001 was co-counsel.

3. *Spanbauer v. Simplot,* 107 Idaho 42, 685 P.2d 271 (1984)
In 1982, a farmer brought suit against Simplot and FMC to recover for injury to his cattle operation and his adjoining property, caused by their emission of fluoride from their phosphate plants. The jury awarded damages to the farmer in the Idaho Sixth District Court (Judge George Hargraves presiding). Judge Hargraves granted a motion for judgment notwithstanding the verdict as to the damages to the cattle operation. All parties appealed to the Idaho Supreme Court (Justices Robert Bakes, Charles Donaldson, Allan Shepard, Stephen Bistline, and Joseph McFadden). The Idaho Supreme Court reversed the jury verdict, holding that there was no substantial evidence to support it, and the granting of the judgment n.o.v., remanding the case for a new trial as to that issue. I assisted

Wesley F. Merrill (now deceased) in the representation of Simplot. I wrote the briefs, outlined the depositions, and did the research regarding the issues in the case. Louis F. Racine (now deceased) represented FMC. R. Max Whittier (now deceased) represented the Plaintiff.

4-5. *Adams v. Armstrong World Industries,* 596 F.Supp. 1407 (D.Ida. 1984); *Waters v. Armstrong World Industries, Inc.,* 773 F.2d 248 (9th Cir. 1985); *Adams and Waters v. Armstrong World Industries,* 664 F.Supp. 463 (D.Ida. 1987) In 1983-84, the surviving heirs of two asbestosis victims brought a wrongful death suit against the manufacturers and distributors of asbestos products, alleging implied warranty, negligence, and strict liability in tort. The United States District Court for the District of Idaho (Judge Marion Callister) granted summary judgment to the Defendants, finding that the Idaho personal injury statute of limitations had already run as of the date of the victims' death, though the cases were filed within two years of the victims' deaths. The United States Ninth Circuit Court of Appeals (Judges Wright, Pregerson, and Alarcon) then certified the cases and asked the Idaho Supreme Court to answer questions about the Idaho statute. The Idaho Supreme Court refused such certification. In an unpublished opinion, the Court of Appeals then remanded the case to the District Court to determine if the statute violated the Idaho Constitution. The District Court (Judge Callister) then held that the statute did not violate the Idaho Constitutional provision requiring courts to be open to every person. I represented (first as co-counsel, then as sole counsel) Celotex Corporation, the Asbestos Facility, Fibreboard, Pittsburg Corning, and Owens-Illinois in this litigation, taking depositions, making and arguing the motions in the District Court and on appeal in the Court of Appeals. The cases were ultimately settled. Other counsel (doing significant work in the cases) were Fred Adams, current address at 535 9th Street, Idaho Falls, Idaho, and telephone (208) 522-2201, for the Plaintiffs, and Christopher Burke, current address at Greener Banducci Shoemaker P.A., 815 W. Washington, Boise, Idaho 83702, and telephone (208) 319-2600, representing Eagle-Picher Industries, Inc. Co-counsel in the cases was Gary T. Dance, current address at Moffatt, Barrett, Rock & Fields, Chtd., P.O. Box 817, Pocatello, Idaho 83204-0817, and telephone (208) 233-2001.

6. *Jenkins v. Armstrong World Industries,* 643 F. Supp. 17, (D.Ida 1985) In 1984, five plaintiffs brought suit in five cases (including two cases transferred from Texas) against the manufacturers and distributors of asbestos products for asbestos related injuries. The United States District Court for the District of Idaho (Judge Marion Callister) granted summary judgment, finding that the personal injury statute of limitations had already run at the time of the filing of the actions. I represented (first as co-counsel, then as sole counsel) Celotex Corporation, the Asbestos Facility, Fibreboard, Pittsburg Corning, and Owens-Illinois in this litigation, taking depositions, making and arguing motions in the District Court and on appeal in the Court of Appeals. The cases were ultimately

settled. Other counsel doing significant work were W. Budd, Frederick Baron & Associates, Dallas Texas for the Plaintiffs and Christopher Burke, current address at Greener Banducci Shoemaker P.A., 815 W. Washington, Boise, Idaho 83702, and telephone (208) 319-2600, representing Eagle-Picher Industries, Inc. Co-counsel again was Gary T. Dance, current address at Moffatt, Barrett, Rock & Fields, Chtd., P.O. Box 817, Pocatello, Idaho 83204-0817, and telephone (208) 233-2001.

7. *Brower v. E.I. Dupont De Nemours and Co.,* 117 Idaho 780, 792 P.2d 345 (1990)
In 1987, a farmer brought suit against my client, Dupont, alleging product liability and misrepresentation. The farmer had purchased an herbicide in 1982, after being advised that its residue would only remain on the land for two years (only wheat and barley could be planted in those years), and applied it to his fields. When, after more than two years, the farmer could not plant other crops, he sought damages from Dupont. The Idaho Seventh District Court (Judge James Herndon) granted summary judgment to Dupont, because the suit had not been brought within the three-year statute of limitations for misrepresentation and the two-year statute of limitations for product liability. The Idaho Supreme Court (Justices Charles McDevitt, Robert Bakes, Larry Boyle, Byron Johnson, and Stephen Bistline) affirmed the District Court on the statute of limitations issue, but reversed as to an award of attorney fees to Dupont (holding that a commercial transaction was not the gravaman of the action). I was sole counsel for Dupont. Dean Williams of Blackfoot, Idaho (present address unknown) represented Brower.

8. *Driscoll v. United States of America,* United States District Court Case No. CV-92-0170-E
In 1993, my client, Driscoll, sought to quiet title in adjoining property, which the United States also claimed by deed. Driscoll sought to quiet title to the property by boundary by agreement and/or boundary by acquiescence. Both parties moved for summary judgment in the United States District Court of Idaho (Judge Edward Lodge presiding). The Court granted summary judgment to Driscoll. I was sole counsel for Driscoll. Celeste K. Miller, current address at U.S. Trustee Program, 304 North 8th Street, Room 302, Boise, Idaho 83702, and telephone (208) 334-9573 represented the United States.

9. *State of Idaho v. M.A. Hanna Company,* 815 F.Supp. 1464 (D.Ida 1993)
In 1983, the State of Idaho brought this action against my client, Hanna, and Noranda Mining, Inc. to recover its cleanup costs under CERCLA, the Idaho statutes, and common law (for cleanup of the Blackbird Mine in Lemhi County, Idaho). Hanna and Noranda then filed third party complaints against three other former operators of the mine. The United States District Court for the District of Idaho (Judges Edward Lodge and Larry Boyle) found that it had jurisdiction over former operators. Though not part of this action, Hanna and Noranda were

thereafter successful in bringing a third party complaint against the United States. I represented Hanna, along with co-counsel, Don Olowinski, now deceased. I attended all depositions, hearings, and participated fully in the defense of our client. Significant opposing counsel were Carl Burke, current address at Greener Banducci Shoemaker P.A., 815 W. Washington, Boise, Idaho 83702, and telephone (208) 319-2600, for Pechiney Corp. and Howmet Corp.; Scott D. Hess, current address at Jones Gledhill Hess Fuhman & Elden, P.O. Box 1097, Boise, Idaho 83701, and telephone (208) 331-1170 for the Alumax entities; Clive Strong, current address at Office of the Attorney General, P.O. Box 83720, Boise Idaho 83720, and telephone (208) 334-4126 for the State of Idaho; and Anthony O. Garvin, Brobeck, Phleger & Harrison, San Francisco, California for Noranda Mining, Inc.

10. *Ramsey v. Allied Van Lines,* Idaho Butte County Case (file has been destroyed) In 1993, a bar owner brought a negligence suit against Allied and its unidentified driver (my clients) for property damage, allegedly caused by an Allied truck when it ran into the front of the bar. The driver then fled Arco, Idaho in his truck. In the Idaho Seventh District Court (Judge James Herndon presiding), the jury found no liability against Allied. The Plaintiff did not appeal. I was chief trial counsel for Allied. D. Russell Wight, current address at Portneuf Medical Center, 651 Memorial Drive, Pocatello, Idaho 83201 was co-counsel. Opposing counsel were Michael R. McBride and Delwin W. Roberts, current address at McBride and Roberts, 1495 East 17th Street, Idaho Falls, Idaho 83404, and telephone (208) 525-2552.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

In January 2002, the Sixth District Court organized a felony drug court program for defendants accused of felony drug problems. As judges, we found that defendants were returning to district court accused of more drug crimes, though previously sentenced for the same crimes. We determined that we should try to protect society, deter these defendants, and rehabilitate them by trying a drug court in our district. I volunteered to be the felony drug court judge and have served in that position since that time. Since the organization of the drug court program, we have found that recidivism has remarkably decreased in drug court graduates.

In 2002, the Idaho Legislature organized the Small Lawsuit Resolution Act Committee, which was charged with rewriting provisions of the Idaho Small Lawsuit Resolution Act, previously passed by the Legislature. The Act provides for a procedure to arbitrate and/or mediate lawsuits, which allege damages of less than $25,000.00. The Committee

met and recommended changes in the Act to the Idaho Legislature. The Legislature enacted the Committee's changes to the Act in 2003. The Idaho Supreme Court and Idaho Legislature asked me to chair that committee. After the Act was amended, the Committee then presented educational seminars about the changes.

I helped to negotiate the purchase of a Dutch French Fry company for the J.R. Simplot Company and also negotiated two long-term natural gas contracts for Simplot.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   As an Idaho District Judge, I am entitled to retirement from the Idaho State Judicial Retirement fund. The amounts and dates of anticipated receipts are undetermined at this time.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I recognize that there may be a potential for a conflict of interest in any judicial position that I may hold. Should I be confirmed, I will follow the Code of Conduct for United States Judges and any other applicable rules, statutes, or regulations applicable to those circumstances. A judge should perform the duties of judicial office impartially.

   At the present time, I follow the Idaho Code of Judicial Conduct. I resolve any potential conflict-of-interest by disqualifying myself in proceedings where my impartiality might reasonably be questioned, such as (1) where I have a personal bias or prejudice concerning a party or lawyer in the proceeding; (2) where I have personal knowledge about the facts of a case or may be a witness in it; (3) where my family or I have an economic interest in the controversy or any of our interests could be substantially affected by the proceeding; or (4) my family is a party to the proceeding, a lawyer in the proceeding, or a material witness to the proceeding.

   I do not presently know of any potential conflicts-of-interest, which I would have during my initial service in the position.

3. **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

4. **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, patents, 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 a copy of the Financial Disclosure Report, attached hereto.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached Financial Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   In a nonpartisan election, I ran for and was elected a District Judge for the Idaho Sixth Judicial District in 1998 (March through May) and 2002 (March through May). I was the candidate and had no opponent. I never solicited or received any campaign contributions; I only rarely attended candidate forums (when asked).

   In January 1993, I was elected Chairman of the Idaho Republican Party. From 1993 to December 1995, I helped elect Republican candidates in the State of Idaho. My responsibilities included speaking at political events, debating candidates and officials from other parties, soliciting campaign contributions, participating in national Republican committees, and supervising and being involved in the activities of the Idaho Republican Party.

   In 1991, I was elected Chairman of the Bannock County Republican Party. From 1991 to January 1993, I helped elect Republican candidates in Bannock County and in southeastern Idaho. My responsibilities included speaking at political events, debating candidates and officials from other parties, soliciting campaign contributions, participating in state Republican committees, and supervising and being involved in the activities of the Bannock County Republican Party.

   In 1980, I was elected an Ada County Precinct Committeeman. From 1980 until January, 1982, I helped elect Republican candidates in Ada County. My responsibilities including participating in Ada Country Republican committees, putting up campaign signs and distributing campaign literature throughout the precinct, and assisting the voters in the precinct to get out to vote.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Smith, Norman R	9th Circuit	12/17/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. ReportType** (check appropriate type)	**6. Reporting Period**
Circuit Judge -- Nominee	(•) Nomination. Date 12/16/2005 ( ) Initial ( ) Annual ( ) Final	1/1/2004 to 12/15/2005
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Bannock County Courthouse 624 East Center, Room 310 Pocatello, Idaho 83205	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	District Judge/Administrative Judge for the Idaho Sixth Judicial District	State of Idaho
2.	Adjunct Faculty	Idaho State University
3.	Member of Board of Directors	Idaho State Civic Symphony
4	Planning Committee Member	Idaho State Tax Institute

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

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1995	State of Idaho Judges Retirement Plan, no control

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Smith, Norman R	12/17/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2003	State of Idaho, wages	95,070.36
2.	2003	Idaho State University, wages	13,125.00
3.	2004	State of Idaho, wages	96,252.60
4.	2004	Idaho State University, wages	14,875.00
5.	2005	State of Idaho, wages	100,123.00
6.	2005	Idaho State University, wages	14,975.00

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2004	School District No. 25, wages
2.	2005	School District No. 25, wages

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

(Includes those to spouse and dependent children See pp 25-27 of instructions)

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Smith, Norman R	12/17/2005

V. GIFTS. (Includes those to spouse and dependent children See pp 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		Exempt	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Smith, Norman R	12/17/2005

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children See pp. 34-57 of filing instructions)

	A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e g div. rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e g buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	NONE (No reportable income, assets, or transactions)									
1.	Key Bank checking accounts	A	Interest	J	T	Exempt				
2.	Key Bank certificates of deposit	A	Interest	J	T					
3.	GE Life and Annuity Assurance Company Annuity	D	Interest	M	T					
4	PERSI Choice Plan	A	Dividend	J	T					
5.	Jefferson Pilot Financial Insurance Company Adjustable Life	A	Interest	J	T					
6.	Jefferson Pilot Financial Insurance Company Adjustable Life	D	Interest	K	T					
7	Jefferson Pilot Financial Insurance Company Adjustable Life	A	Interest	J	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Smith, Norman R	Date of Report 12/17/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

None

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Smith, Norman R	Date of Report 12/17/2005

IX. CERTIFICATION.

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

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

Signature Norman Randy Smith Date December 17, 2005

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		7	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others		1	365
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		95	572
Real estate owned-add schedule		350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance		25	000				
Other assets itemize:							
Certificates of Deposit		2	025				
GE Variable Annuity		162	000				
PERSI Choice Plan		1	250	Total liabilities		96	937
				Net Worth		550	838
Total Assets		647	775	Total liabilities and net worth		647	775
CONTINGENT LIABILITIES	NONE			GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 350,000
Real Estate Mortgages Payable	
Personal residence	$ 95,572

III. GENERAL (PUBLIC)

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

Since 1996, I have mediated 75 -125 civil cases each year for no financial remuneration. Most of these cases have been mediated between parties, who could not afford mediation fees and could not afford the costs of litigation. On average, I spend five hours in each mediation.

While working with Merrill & Merrill, Chartered (1982-95), I volunteered to be assigned criminal cases for the United States District Court of Idaho for financially underprivileged criminal defendants. I was assigned three such cases and handled them through sentencing, at a lower federal attorney fee. I averaged working two hundred hours on each of those cases.

While working with Merrill & Merrill, Chartered (1982-95), I also volunteered to serve as a lawyer for the financial underprivileged with the Idaho State Bar Pro Bono program. I remember being assigned cases in estate planning on a few occasions (uncertain as to the exact number). I averaged twenty hours on such cases.

While working with Merrill & Merrill, Chartered (1982-95), I also forgave many legal billings, because the clients, asking me to do estate planning, contract drafting, divorce litigation, and other litigation, could not pay. I cannot estimate the time spent in those endeavors, but many hours.

As a part of my membership in the Boy Scouts of America, Church of Jesus Christ of Latter-day Saints, and Gate City Rotary Club, I am constantly involved in service projects for members of our community, including the disadvantaged. I cannot estimate the time spent in those endeavors, but many hours.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not presently belong to, nor have I belonged to, any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no selections commission in Idaho at this time. However, Senator Larry Craig (R-Ida) has used such a selection commission in the past. No, a selection commission did not recommend my nomination.

In January 2003, Senator Larry Craig telephoned me to ask if I would be interested in a position on the United States Ninth Circuit Court of Appeals. I told him that I would be honored to be considered. In February 2003, a member of the White House staff telephoned me and asked that I come to Washington, D.C. for an interview. I went to Washington, D.C. that next week and was interviewed by White House staff. I was informed some months thereafter that I was not chosen for that position. In December 2004, the White House asked if I would be interested in being interviewed again. I responded that I would be honored to be considered. Members of the White House staff and the Department of Justice staff then again interviewed me. In September 2005, I was advised by the White House that I had been approved for further consideration. After completing nomination forms and undergoing a background investigation, I was informed by the White House that I would be formally nominated. The President sent my nomination to the Senate on December 16, 2005.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The United States Constitution outlines a separation of powers in the federal government, by giving distinct powers to Congress, to the President, and to the federal judiciary. Article I gives Congress the power to legislate and sets out the rules for enacting legislation. Article II gives the President the power to enforce or execute the laws. Article III gives the judicial power of the United States to the Supreme Court and other federal courts to interpret the laws. The judiciary therefore should only perform the function that it has been delegated in the Constitution.

Article III, section 2 of the Constitution outlines that the federal judicial power should extend to cases or controversies. Those cases or controversies are then delineated. This doctrine reflects a Constitutional commitment to an adversarial system and to the idea that such a system best allows the judiciary to perform its Constitutional function. It also serves to limit the judiciary's opportunity to abandon its own function of interpreting the law. The judiciary should therefore only resolve the case or controversy before it.

Other limitations on judicial power are related to the restraint of only deciding cases or controversies. Courts should not decide a constitutional issue until it is absolutely necessary, instead resolving cases on alternative grounds. Statutes should be construed so as to avoid a constitutional problem. Courts should presume that legislation is constitutional and force the complaining party to demonstrate that it is unconstitutional. Courts must limit who may litigate constitutional questions (standing), when those questions should be litigated (mootness, ripeness), and what may be litigated (no political questions). The judiciary should therefore enforce these limitations to judicial power.

The doctrine of judicial review embodies two very important principles. First, a court is bound by the doctrine of stare decisis in deciding cases before it. Judges must follow the prior decisions of higher courts in similar cases and accept as authoritative the prior decisions of that court. Second, as to statutory and Constitutional interpretation, courts should interpret the language, using its plain meaning. The clear, common, accepted, and usual meaning of the words is important. Only when clearly ambiguous may a court resort to other methods to interpret the statute or Constitution. When courts

fail to employ these doctrines, they fail to act within their Constitutional delegation of power.

Experience teaches me that it is dangerous to evaluate the tendencies of a judge or the judiciary without reviewing the cases in which the judicial decisions have been made. However, to the extent that the judiciary fails to abide by the above principles, I believe that it merits the criticisms detailed in the question.

AFFIDAVIT

I, Norman Randy Smith, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Dec. 29, 2005 (DATE)

Norman Randy Smith (NAME)

Brandy Peck (NOTARY) 8/2011

BRANDY PECK NOTARY PUBLIC STATE OF IDAHO

Senator COBURN. Professor Schiltz?

STATEMENT OF PATRICK JOSEPH SCHILTZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA

Mr. SCHILTZ. Thank you, Mr. Chairman. I, too, want to express my appreciation to the Judiciary Committee, and particularly to you for allowing this hearing to go forward. I did not have as far to come as Judge Smith did, but I had four kids to get into their Sunday best and try to keep clean all day.

[Laughter.]

Mr. SCHILTZ. Doing that twice would have been a lot. So thank you personally for making sure this hearing went forward.

I also want to express my deep gratitude to the President for nominating me, to Senator Coleman for recommending me, and to Senator Dayton for helping to make sure this hearing would go forward.

I don't have an opening statement, but I would like just briefly to introduce my family: My wife, Elizabeth Schiltz. This happens to be her birthday, as Senator Coleman mentioned. This is the first time we have had a birth day at a confirmation hearing. My oldest child, Anna, who is 15. My son Joe, whose birthday is also today. He is 13 today. My son Peter, who is sitting behind me to my left. And, finally, the last of our children, as I underscore, Katie, who is 5.

Thank you again, Mr. Chairman.

[The biographical information of Mr. Schiltz follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   Patrick Joseph Schiltz

2. **Address: List current place of residence and office address(es).**

   Residence: Minnetonka, Minnesota

   Office: University of St. Thomas School of Law
   1000 LaSalle Avenue – MSL 400
   Minneapolis, MN 55403

3. **Date and place of birth.**

   July 6, 1960
   Duluth, Minnesota

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Marital status:	Married to Elizabeth Rose Schiltz
Spouse's maiden name:	Elizabeth Rose Kaczynski
Spouse's occupation:	Law professor
Spouse's employer:	University of St. Thomas School of Law 1000 LaSalle Avenue – MSL 400 Minneapolis, MN 55403

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   Harvard Law School, 1982–1985, awarded J.D. *magna cum laude* on June 6, 1985

   College of St. Scholastica, 1978–1981 (completed studies in three years), awarded B.A. *summa cum laude* on May 23, 1981

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

July 2000 to present: St. Thomas More Chair in Law (previously Interim Dean, Associate Dean for Academic Affairs, and Professor of Law), University of St. Thomas School of Law, 1000 LaSalle Avenue, MSL 400, Minneapolis, MN 55403

July 1995 to June 2000: Associate Professor of Law, Notre Dame Law School, University of Notre Dame, P.O. Box R, Notre Dame, IN 46556

September 1987 to June 1995: Partner (previously Associate), Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402

September 1986 to July 1987: Law Clerk, Justice Antonin Scalia, United States Supreme Court, One First Street, NE, Washington, DC 20543

August 1985 to September 1986: Law Clerk, Judge Antonin Scalia, United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, NW, Washington, DC 20001

May 1985 to July 1985: Summer Associate, Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402

August 1984 to May 1985: Resident Assistant, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138

September 1984 to December 1984: Legal Methods Instructor, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138

May 1984 to August 1984: Summer Associate, Miller, Cassidy, Larroca & Lewin, 2555 M Street, NW, Suite 500, Washington, DC 20037 (firm no longer exists)

August 1983 to May 1984: Resident Assistant, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138

May 1983 to August 1983: Summer Associate, Williams & Jensen PLLC, 1155 21st Street, NW, Suite 300, Washington, DC 20036

May 1981 to September 1982: Legislative Aide, Senator David F. Durenberger, United States Senate, 353 Russell Senate Office Building, Washington, DC 20510

7. Military Service: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Post law school honors:

Elected "Professor of the Year" by Notre Dame Law School Class of 1999

Presidential Alumni Award, College of St. Scholastica

Harvard Law School honors:

J.D. degree awarded *magna cum laude*

Editor, *Harvard Law Review*, volumes 97 and 98 (qualified on basis of first-year grades)

Selected as Legal Methods Instructor

College of St. Scholastica honors:

B.A. degree awarded *summa cum laude* (unofficially informed that I ranked first in my graduating class)

1980 Harry S. Truman Scholar from Minnesota

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

American Bar Association

American Law Institute

Association of American Law Schools

C-SPAN advisory committee on televising United States Supreme Court proceedings

Catholics Against Capital Punishment

Federalist Society for Law and Public Policy Studies

Harvard Defenders

Harvard Law Review (served as Transition Chair in 1984)

Hennepin County (Minnesota) Bar Association

Judicial Conference of the United States:
- Advisory Committee on the Federal Rules of Appellate Procedure (Reporter, 1997–present)
- E-Government Subcommittee
- Subcommittee on Attorney Conduct
- Subcommittee on Technology
- Subcommittee on Time-Computation Rules (Reporter, 2005–present)

Minnesota State Bar Association

Robert A. Grant American Inn of Court

Seventh Circuit Bar Association

St. Thomas More Society

Supreme Court Historical Society

Warren E. Burger American Inn of Court

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

To the best of my knowledge, none of the organizations to which I belong is active in lobbying before public bodies. I belong to the following organizations:

Church of St. Therese of Deephaven

Down Syndrome Association of Minnesota

Harry S. Truman Scholarship Foundation, Minneapolis Selection Panel

Minnesota Zoo

Science Museum of Minnesota

YMCA

11. Court Admission: **List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Minnesota Supreme Court, November 15, 1985

United States District Court, District of Minnesota, February 19, 1988

United States Court of Appeals for the Eighth Circuit, February 25, 1988

United States Court of Appeals for the Seventh Circuit, September 18, 1998

United States Supreme Court, October 4, 2004

12. Published Writings: **List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Publications:

I was a reporter and editor on both my high-school and college newspapers — and I acted as a "teen reporter" for my hometown newspaper — and thus I wrote several dozen articles before I enrolled in law school. I have no memory or copies of those articles, except for a few articles that I wrote as a high-school student and that my parents saved as keepsakes.

From the time I enrolled in law school to today, I have published (or intend to publish) the following:

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (4th ed. forthcoming 2007)

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (3d ed. Supp. forthcoming 2006)

Patrick J. Schiltz, *Much Ado About Little: Explaining the* Sturm und Drang *Over the Citation of Unpublished Opinions*, 62 WASH. & LEE L. REV. (forthcoming 2005) (invited symposium contribution)

Patrick J. Schiltz & Douglas Laycock, *Employment in Religious Organizations, in* RELIGIOUS ORGANIZATIONS IN THE UNITED STATES: A STUDY OF IDENTITY, LIBERTY, AND THE LAW (Carolina Academic Press forthcoming 2005) (this paper was submitted in 1999 for anticipated publication in 2000)

Patrick J. Schiltz, *The Citation of Unpublished Opinions in the Federal Courts of Appeals*, 74 FORDHAM L. REV. 23 (2005) (invited symposium contribution)

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (3d ed. Supp. 2005)

Patrick J. Schiltz, *Commemoration of the Fifth Anniversary of the Decision to Open the University of St. Thomas School of Law*, 1 U. ST. THOMAS L.J. 1041 (2004)

Patrick J. Schiltz, *Making Ethical Lawyers*, 45 S. TEX. L. REV. 875 (2004) (invited symposium contribution)

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (3d ed. Supp. 2004)

Patrick J. Schiltz, *The Impact of Clergy Misconduct Litigation on Religious Liberty*, 44 B.C. L. REV. 949 (2003) (invited symposium contribution; lead article)

Patrick J. Schiltz, *Not All the News Is Fit To Print: What the Media Missed in the Sexual-Abuse Scandal*, COMMONWEAL, Aug. 15, 2003, at 14

Patrick J. Schiltz, *The Future of Sexual Abuse Litigation*, AMERICA, July 7-14, 2003, at 8

Patrick J. Schiltz, *Defending the Church*, LITIG., Spring 2003, at 19 (invited symposium contribution)

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (3d ed. Supp. 2003)

16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & PATRICK J. SCHILTZ, FEDERAL PRACTICE AND PROCEDURE (3d ed. Supp. 2002) (I was invited to replace Charles Alan Wright as the lead author of this volume, following Prof. Wright's death in 2000)

Patrick J. Schiltz, *Witness for the Prosecution*, NOTRE DAME MAGAZINE, Autumn 1999, at 18

Patrick J. Schiltz, *Graduation Speech*, NOTRE DAME LAWYER, Summer 1999, at 40

Patrick J. Schiltz, *Provoking Introspection: A Reply to Galanter & Palay, Hull, Kelly, Lesnick, McLaughlin, Pepper, and Traynor*, 52 VAND. L. REV. 1033 (1999) (symposium reply)

Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999) (symposium centerpiece)

Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998)

Patrick J. Schiltz, *Don't Leave Religion Out of the Classroom*, U.S. CATHOLIC, Jan. 1998, at 22

Patrick J. Schiltz, *Keeping the Faith: Because Religion is Ignored in Colleges, Professionals Take an Incongruous Approach to Ethical Decisions*, CHI. TRIB., May 7, 1996, at 19

Patrick J. Schiltz, Book Review, 7 CONST. COMMENTARY 467 (1990) (reviewing WILLIAM H. REHNQUIST, THE SUPREME COURT: HOW IT WAS, HOW IT IS (1987))

Patrick J. Schiltz, *Shakespeare, Kierkegaard, Politics and Law*, ST. SCHOLASTICA TIMES MAGAZINE, May 1988, at 24

Patrick J. Schiltz, *Bork, Scalia: Philosophically Same, But Only One is on Court*, ST. PAUL PIONEER PRESS DISPATCH, Oct. 20, 1987, at 8A

Note, *Impasse Resolution in Public Sector Labor Disputes*, 97 HARV. L. REV. 1700 (1984)

Book Note, 97 HARV. L. REV. 1246 (1984) (reviewing BARBARA MILBAUER, THE LAW GIVETH: LEGAL ASPECTS OF THE ABORTION CONTROVERSY (1983))

Speeches:

I have no record of the speeches that I gave before becoming a law professor, nor do I have copies of those speeches (with only a handful of exceptions). I have given dozens of speeches since becoming a law professor in 1995. For example, I have spoken often to church leaders about how to handle reports of clergy sexual abuse, stressing the need to remove dangerous pastors from ministry, to treat victims with compassion, and to be open and honest at all times. I do not consider those to be speeches on issues involving constitutional law or legal policy, though. I have also spoken often about the practice of law, including the health and job satisfaction of lawyers, the increasing materialism of the profession, and the failure of many

attorneys to use their legal training to serve society. Again, I do not consider those to be speeches on issues involving constitutional law or legal policy. Finally, I have given numerous informal speeches, such as talks to student groups, prospective students, or alumni. I have no record of those speeches, and, with only a couple of exceptions, I either did not use notes at those speeches or I used handwritten notes that I threw away. As best as I can recall, none of those speeches was on issues involving constitutional law or legal policy.

My formal speeches on issues involving constitutional law or legal policy have been as follows:

Spoke on "The Roberts Nomination" at a meeting of the Downtown Minneapolis Rotary Club in Minneapolis, Minnesota, on August 5, 2005

Spoke on "Much Ado About Little: Explaining the *Sturm und Drang* Over the Citation of Unpublished Opinions" at a conference on "Have We Ceased to be a Common Law Country?," sponsored by the Washington and Lee University School of Law in Lexington, Virginia, on March 18, 2005

Moderated a panel discussion on "Citation of Unpublished Opinions: The Appellate Judges Speak" sponsored by the Philip D. Reed Professorship in Civil Justice and Dispute Resolution at Fordham University School of Law in New York, New York, on February 17, 2005

Spoke on "Too Much Law, Too Little Justice: How Lawyers Helped to Turn a Clergy Sexual Abuse Problem Into a Clergy Sexual Abuse Crisis" as part of a series on "The Wounded Body of Christ: Sexual Abuse in the Church" sponsored by the University of Dayton in Dayton, Ohio, on January 10, 2005

Participated in a panel discussion on "Counseling, Litigation, and the Church: Room for Gospel Values?", sponsored by the Institute on Religion, Law & Lawyer's Work at Fordham University School of Law in New York, New York, on February 9, 2004

Spoke on "Recent Changes to the Federal Rules of Appellate Procedure" at the 29th Annual Federal Court Practice Seminar sponsored by the Minnesota Chapter of the Federal Bar Association in Minneapolis, Minnesota, on June 12, 2003

Spoke on "The Impact of Crisis-Related Litigation and Legislation on Religious Institutions and Religious Freedom" at a conference on "The Impact of the Clerical Sexual Abuse Crisis on Religion in the Public Square" sponsored by the Pew Forum on Religion and Public Life and by the American Catholics in the Public Square Project at the Brookings Institution in Washington, D.C., on May 13, 2003

Spoke on "Untold Stories About the Clergy Sexual Abuse Crisis" at a meeting of the Downtown Minneapolis Rotary Club in Minneapolis, Minnesota, on May 9, 2003

Spoke on "The Impact of Clergy Sexual Misconduct Litigation on Religious Liberty" at a symposium sharing the same title sponsored by the *Boston College Law Review* at Boston College Law School in Boston, Massachusetts, on April 4, 2003

Spoke on "The Future of Clergy Sexual Misconduct Litigation" at a conference of the bishops of the Evangelical Lutheran Church in America in Charleston, South Carolina, on March 6, 2003

Spoke on "On the Quality of Lay Leadership: Some Observations on Laity Who Represent the Church" at a conference on "Effective Religious Leadership in an Age of Change" sponsored by Foundations and Donors Interested in Catholic Activities in Naples, Florida, on January 24, 2003

Spoke on "Restoring Trust: Perspectives After Dallas" at a seminar for Catholic bishops at the University of Notre Dame in South Bend, Indiana, on November 4, 2002

Spoke on "Cameras in the Courtroom" at the annual regional conference of the Society of Professional Journalists in South Bend, Indiana, on April 5, 1997

13. **Health: What is the present state of your health? List the date of your last physical examination.**

My health is excellent. My last physical examination was on November 29, 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

N/A.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Public Offices:

Summer 1980	Intern to Senator David F. Durenberger, United States Senate. Appointed by Senator Durenberger.
Fall 1980	Delegate to St. Louis County (Minnesota) Democratic-Farmer-Labor ("DFL") Convention. Elected by participants in DFL precinct caucus.
Fall 1980	Alternate Delegate to Minnesota State DFL Convention. Elected by delegates to St. Louis County DFL Convention.
May 1981 to September 1982	Legislative Aide to Senator David F. Durenberger, United States Senate. Appointed by Senator Durenberger
Spring 1985	Intern to Organized Crime Strike Force, United States Department of Justice. Appointed by the head of the Boston, Massachusetts office of the Strike Force.
August 1985 to September 1986	Law Clerk to Judge Antonin Scalia, United States Court of Appeals for the District of Columbia Circuit. Appointed by Judge Scalia.
September 1986 to July 1987	Law Clerk to Justice Antonin Scalia, United States Supreme Court. Appointed by Justice Scalia.
Fall 1988	Delegate to Hennepin County (Minnesota) Republican Convention. Elected by participants in Republican precinct caucus.
July 1997 to Present	Reporter to the Advisory Committee on the Federal Rules of Appellate Procedure. Appointed by Chief Justice William H. Rehnquist.

Unsuccessful Candidacies:

I have never run unsuccessfully for public office.

17. **Legal Career:**

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

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

From 1985 to 1986, I served as a law clerk to then-Judge Antonin Scalia of the United States Court of Appeals for the District of Columbia Circuit. I began my clerkship in August 1985 and was supposed to end it in June 1986. My plan was to work for a law firm for a year, and then to clerk for Justice Sandra Day O'Connor of the United States Supreme Court. However, Judge Scalia was himself nominated to the Supreme Court during the last week of my clerkship with him. He asked me to help him prepare for his confirmation hearings and, after he was confirmed, he asked me to clerk for him for an additional year. Justice O'Connor released me from my commitment to clerk for her, and thus I clerked for Judge Scalia on the D.C. Circuit until September 1986 and then for Justice Scalia on the Supreme Court until July 1987.

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

I did not practice alone.

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

During the summer of 1980, I served as an intern in the office of Senator David F. Durenberger, United States Senate, 353 Russell Senate Office Building, Washington, DC 20510.

From May 1981 to September 1982, I served on the staff of Senator David F. Durenberger as a Legislative Aide, responsible for helping to cover the Finance and Judiciary Committees. Senator Durenberger's office address was 353 Russell Senate Office Building, Washington, DC 20510.

From May 1983 to August 1983, I worked as a summer associate at Williams & Jensen PLLC, now located at 1155 21st Street, NW, Suite 300, Washington, DC 20036.

From May 1984 to August 1984, I worked as a summer associate at Miller, Cassidy, Larroca & Lewin, then located at 2555 M Street, NW, Suite 500, Washington, DC 20037. The firm no longer exists.

During the spring of 1985, I interned in the Boston office of the Organized Crime Strike Force of the United States Department of Justice. I do not know the address.

From May 1985 to July 1985, I worked as a summer associate at Faegre & Benson LLP, now located at 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402.

From August 1985 to September 1986, I served as a law clerk to Judge Antonin Scalia of the United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, NW, Washington, DC 20001.

From September 1986 to July 1987, I served as a law clerk to Justice Antonin Scalia of the United States Supreme Court, One First Street, NE, Washington, DC 20543.

From September 1987 to June 1995, I worked as an associate and then (beginning January 1, 1993) as a partner at Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402.

From July 1995 to June 2000, I worked as Associate Professor of Law at Notre Dame Law School, University of Notre Dame, P.O. Box R, Notre Dame, IN 46556.

In 1997, I was appointed by Chief Justice William H. Rehnquist to serve as the Reporter to the Advisory Committee on the Federal Rules of Appellate Procedure. The Advisory Committee works under the auspices of the Judicial Conference of the United States and is supported by the Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20544. I continue to serve as Reporter.

Since July 2000, I have served on the faculty of the University of St. Thomas School of Law, which I helped to found, and which enrolled its first class of students in August 2001. I served as Associate Dean for Academic Affairs from July 2000 to June 2003 (except during the Spring 2002 semester, when I served as Interim Dean). I was then awarded the St. Thomas More Chair in Law, which I continue to hold. My office address is University of St. Thomas School of Law, 1000 LaSalle Avenue, MSL 400, Minneapolis, MN 55403.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I practiced law at Faegre & Benson LLP from September 1987 until June 1995, when I left to join the faculty of Notre Dame Law School. At Faegre, I was a member, at various times, of the Business Litigation, General Litigation, and Labor and Employment Law practice groups. My practice consisted mostly of client counseling, discovery, and motions practice, and focused on four areas:

a. I spent much of my time defending clergy sexual misconduct lawsuits against religious organizations and counseling religious organizations about preventing and responding to reports of clergy sexual misconduct. I worked in one capacity or another on about 100 lawsuits,

sometimes defending the lawsuits myself, sometimes defending the lawsuits with the help of other attorneys, and sometimes supervising local counsel who were defending the lawsuits. I was also consulted by religious leaders with respect to approximately 400 cases that did not result in litigation.

In addition, I did a great deal of work that was unrelated to lawsuits that were threatened or filed by victims of clergy sexual misconduct. I often had to represent my church clients against their own insurance companies when, for example, the companies declined to defend lawsuits or the companies insisted that the churches play "hardball" or otherwise act in objectionable ways. I also had to represent my church clients against accused pastors, including investigating complaints against pastors, responding to threats of litigation from pastors, defending lawsuits brought by pastors, and, in a few instances, "prosecuting" accused pastors in church disciplinary proceedings.

In addition to working on individual cases, I helped religious organizations in other ways. I drafted policies and procedures for dealing with reports of clergy sexual misconduct. I presented dozens of seminars to religious and lay leaders about the need to remove dangerous pastors from ministry, to treat victims with compassion, and to be open and honest about all things. And I worked with the Minnesota Legislature to strengthen the criminal sexual abuse statutes. (I helped to draft an amendment to Minn. Stat. §§ 609.344 and 609.345 that expressly criminalized the sexual exploitation of counselees by members of the clergy.) I did much of this work without charge.

b. I represented professional sports organizations in connection with antitrust, labor, employment, contract, and other litigation. The three most significant sports law matters on which I worked were a series of antitrust actions brought against the National Football League; a lawsuit that arose out of a fight for control of the Minnesota Vikings; and two lawsuits that arose out of an attempt by the owners of the Minnesota Timberwolves to sell the team to a group of investors in New Orleans. I also worked on several smaller matters, such as contract disputes that arose between the Minnesota Vikings and certain of their players.

c. I represented media interests — in particular, the *Star Tribune*, Minnesota's largest newspaper — in many cases. Although I worked on defamation and other matters, I specialized in bringing "access" actions — that is, lawsuits to force the government to release information to the public. Some of the *Star Tribune* access cases that I can recall handling involved an attempt to get copies of search warrants and other papers relating to a criminal investigation of Unisys (a defense contractor), an attempt to get copies of papers relating to the killing of an unarmed African-American teenager (Tycel Nelson) by a white Minneapolis police officer, an attempt to get a sheriff to release the names of two suspects arrested in connection with a high-profile murder, an attempt to get the names of the jurors sitting on the criminal trial of two Northwest Airlines pilots accused of flying while under the influence, and an attempt to get from the State of Minnesota data collected under the Drug and Alcohol Abuse Normative Evaluation System.

d. I was involved in a variety of business, tort, employment, and environmental cases, including insurance coverage disputes, products liability actions, sexual harassment cases, contracts disputes, hazardous waste cases, wrongful termination matters, and similar cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In my work for religious organizations, I represented or advised the following denominations or their affiliates: the Evangelical Lutheran Church in America, the Roman Catholic Church, the Episcopal Church, the Presbyterian Church (USA), the United Methodist Church, the American Baptist Churches USA, the Greek Orthodox Archdiocese of America, the Lutheran Church–Missouri Synod, the Church of the Brethren, the Reformed Church in America, the Moravian Church in America, the Evangelical Covenant Church in America, and the Wisconsin Evangelical Lutheran Church. Most of my work was done for the Evangelical Lutheran Church in America.

In my sports law work, I represented the National Football League and its member teams, the owners of the Minnesota Vikings professional football franchise, and the owners of the Minnesota Timberwolves professional basketball franchise.

In my media work, I represented Cowles Media Company, which then owned the *Star Tribune* newspaper.

Representative clients for my "other" work included the Home Insurance Company, the Chubb Group of Insurance Companies, the St. Paul Companies, Norwest Bank Minnesota, Otis Elevator Company, George A. Hormel & Company, United Services Automobile Association, United Parcel Service, Asea Brown Boveri, Brookfield Development, Essex Group, Dealer Cover, Vapor Corporation, Wisconsin Box Company, Standard Management of Minnesota, and the Emergency Physicians Professional Association.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Occasionally.

2. What percentage of these appearances was in:

(a)	**federal courts;**	33%
(b)	**state courts of record;**	67%
(c)	**other courts.**	0%

3. **What percentage of your litigation was:**
   (a) civil; 95%
   (b) criminal. 5%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

As sole counsel, I tried one case to a jury verdict (following a month-long trial) and four cases to "verdicts" before arbitrators or other tribunals. (I also conducted evidentiary hearings, at which I questioned witnesses and introduced evidence.) As associate counsel, I was involved in about ten cases that were tried before juries, although I do not believe that my work in those cases involved me personally addressing the court or the jury.

5. **What percentage of these trials was:**
   (a) jury;
   (b) non-jury.

I believe that all of the cases in which I assisted were tried before juries.

18. <u>Litigation</u>: **Describe the ten most significant litigated matters which you personally handled. 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.

a. *PJ Acquisition Corp., etc. v. John C. Skoglund, et al.* This case arose out of a battle for control of the corporation that owned the Minnesota Vikings professional football franchise. My law firm represented Executive Vice President Michael E. Lynn, III, and the holders of two-thirds of the voting stock against what was essentially a hostile takeover attempt by two businessmen (Irwin Jacobs and Carl Pohlad) who owned one-third of the voting stock. Messrs. Jacobs and Pohlad attempted to gain control of the corporation in several ways, including by filing a lawsuit in Hennepin County (Minnesota) District Court accusing our clients of various types of corporate misconduct. The lawsuit was filed in 1987.

I assisted in the discovery process and in motions practice, but my main involvement was in researching and writing the brief for our clients after they won summary judgment in the district court and that judgment was appealed to the Minnesota Supreme Court. The judgment of the trial court was affirmed in part and reversed in part in a decision reported as *PJ Acquisition Corp. v. Skoglund*, 453 N.W.2d 1 (Minn. 1990). I did not do much work on the case after it was remanded. I believe that the case was settled in 1991 or 1992 when our clients essentially agreed to buy out the plaintiffs.

Judge Robert G. Schiefelbein presided over the case initially. After the case was remanded, Judge Schiefelbein recused himself, and the case was assigned to another judge. (I do not remember to whom.)

The attorneys at my firm who worked with me on the case were James Fitzmaurice, John D. French, and William J. Tipping. Mr. Fitzmaurice is now deceased. Mr. French (612/339-0460) is now retired; his home address is 17 Greenway Gables, Minneapolis, MN 55403. Mr. Tipping (612/333-9559) is now a partner at Flynn, Gaskins & Bennett LLP, 333 South Seventh Street, Suite 2900, Minneapolis, MN 55402.

Our co-counsel were Richard N. Flint and Curtis D. Forslund of Gray Plant Mooty, 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. Mr. Flint (612/632-3065) is still at the firm. I believe that Mr. Forslund (520/299-4131) is now semi-retired and living at 6217 N. Ventana View Place, Tucson, AZ 85750.

Messrs. Jacobs and Pohlad were represented by Jerome B. Simon (612/672-8383), now of Maslon, Edelman, Borman & Brand LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402; and Geoffrey P. Jarpe (612/604-6697), now of Winthrop & Weinstine PA, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402.

b. *Employers Reinsurance Corporation v. Associated General Agency, Inc., et al.* John Chopyk was the president of Associated General Agency ("AGA"), which served as an agent of the Home Insurance Company ("Home") from 1970 to 1985. In October 1985, Home terminated AGA's agency agreement after Home discovered that Chopyk had for many years been making improper payments — alleged by Home to be bribes — to the underwriting manager of Home's Minnesota office. Home suffered millions of dollars in underwriting losses on policies that the manager agreed to issue to AGA customers.

In 1985, AGA and Chopyk sued Home in Hennepin County (Minnesota) District Court. Home retained my law firm to represent it. Home answered, counterclaimed, and removed the action to the United States District Court for the District of Minnesota, where it was assigned Civil File No. 3-85-1886. After two years of litigation — litigation in which I was not involved — Home, AGA, and Chopyk signed what is known in Minnesota as a "Miller-Shugart" agreement. Under that agreement, AGA and Chopyk agreed that a judgment of $1.75 million could be entered against them and in favor of Home. AGA and Chopyk also assigned to Home

all rights that they had against their professional liability carrier, Employers Reinsurance Corporation ("ERC"). In return, Home agreed not to collect the judgment from AGA or Chopyk personally, but instead to attempt to collect it from ERC.

ERC and Home then engaged in protracted litigation in Hennepin County (Minnesota) District Court before Judge Robert G. Schiefelbein. (The case was assigned File No. CT 87-18246.) The main issue in the case was whether ERC was liable to pay the judgment that had been entered against AGA and Chopyk. To recover, Home had to prove that the judgment was covered under AGA's and Chopyk's professional liability policy, that the settlement was reasonable, and that the settlement was not the result of collusion.

After over three years of discovery and motions practice, ERC and Home agreed to submit their dispute to binding arbitration, with the arbitrators being instructed to issue an award of no less than $250,000 and no more than $1.5 million. The matter was arbitrated before a three-person panel in October 1992. If memory serves, the arbitrators awarded $1.25 million to Home.

I devoted hundreds of hours to this litigation between 1987 and 1992. I conducted almost all of the discovery, I briefed and argued all of the motions, and I presented most of our case before the arbitrators. I initially worked on this case with James B. Loken, but, after he was appointed to the United States Court of Appeals for the Eighth Circuit, I worked on the case with James Fitzmaurice. Chief Judge Loken (612/664-5810) is at 11W United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. Mr. Fitzmaurice is now deceased.

ERC was represented by Jeffrey M. Bauer of Foster, Waldeck, Lind & Gries, Ltd., 2300 Lincoln Centre, 333 South Seventh Street, Minneapolis, MN 55402. The firm no longer exists; Mr. Bauer (630/584-7552) has left the practice of law and is now President of NationAir, 1525 Kautz Road, Suite 100, West Chicago, IL 60185.

The panel of arbitrators was headed by Craig W. Gagnon (612/607-7293), Oppenheimer Wolff & Donnelly LLP, Plaza VII, Suite 3300, 45 South Seventh Street, Minneapolis, MN 55402. I believe that the other two arbitrators were Richard J. Nygaard (612/340-7912), Rider Bennett LLP, 33 South Sixth Street, Suite 4900, Minneapolis, MN 55402; and Richard P. Mahoney (612/339-5863), Mahoney, Dougherty and Mahoney PA, 801 Park Avenue, Minneapolis, MN 55404.

c. *National Football League Antitrust Litigation.* I was one of about a dozen attorneys who defended the National Football League ("NFL") and its member teams in a series of antitrust actions filed by the National Football League Players Association ("NFLPA") and various professional football players. In essence, the NFLPA and the players alleged that the NFL was violating the antitrust laws by restricting the movement of players who were not under contract. The cases were extremely complex and involved years of discovery and motions practice. One of the cases — *McNeil v. National Football League* — culminating in a two-month jury trial in

1992. After the jury returned a verdict against the NFL, the case was settled, and the settlement was eventually reflected in a new collective bargaining agreement. Even after the litigation was settled, though, various disputes arose about the interpretation of the settlement agreement. I devoted hundreds of hours to the case from roughly 1989 to 1993. I was involved in strategy sessions, factual investigation, discovery, motions practice, jury selection, and witness preparation.

The NFL/NFLPA antitrust litigation produced a large number of reported decisions, including the following: *Powell v. National Football League*, 678 F. Supp. 777 (D. Minn. 1988), *rev'd*, 930 F.2d 1293 (8th Cir. 1989); *Powell v. National Football League*, 690 F. Supp. 812 (D. Minn. 1988); *Powell v. National Football League*, 711 F. Supp. 959 (D. Minn. 1989); *Powell v. National Football League*, 764 F. Supp. 1351 (D. Minn. 1991); *Powell v. National Football League*, 773 F. Supp. 1250 (D. Minn. 1991); *Powell v. National Football League*, 139 F.R.D. 381 (D. Minn. 1991); *McNeil v. National Football League*, 777 F. Supp. 1475 (D. Minn. 1991); *Five Smiths, Inc. v. National Football League Players Association*, 788 F. Supp. 1042 (D. Minn. 1992); *McNeil v. National Football League*, 790 F. Supp. 871 (D. Minn. 1992); *Jackson v. National Football League*, 802 F. Supp. 226 (D. Minn. 1992); *White v. National Football League*, 822 F. Supp. 1389 (D. Minn. 1993), *aff'd*, 41 F.3d 402 (8th Cir. 1994); *White v. National Football League*, 836 F. Supp. 1458 (D. Minn. 1993), *aff'd*, 41 F.3d 402 (8th Cir. 1994); *White v. National Football League*, 836 F. Supp. 1505 (D. Minn. 1993); *White v. National Football League*, 836 F. Supp. 1508 (D. Minn. 1993), *aff'd*, 41 F.3d 402 (8th Cir. 1994); *White v. National Football League*, 899 F. Supp. 410 (D. Minn. 1995); *White v. National Football League*, 972 F. Supp. 1230 (D. Minn. 1997); *White v. National Football League*, 92 F. Supp.2d 918 (D. Minn. 2000); *White v. National Football League*, 88 F. Supp.2d 993 (D. Minn. 2000); *White v. National Football League*, 149 F. Supp.2d 858 (D. Minn. 2001).

Judge David S. Doty of the United States District Court for the District of Minnesota presided over these cases. He was assisted at times by his law clerk, Barbara Podlucky Berens, who later was appointed Special Master to help resolve disputes over the interpretation of the settlement agreement. Ms. Berens (612/349-6171) is now a partner at Kelly & Berens PA, 80 South Eighth Street, Suite 3720, Minneapolis, MN 55402.

The attorneys at my firm with whom I worked on the cases were James Fitzmaurice and Daniel J. Connolly. Mr. Fitzmaurice is now deceased. Mr. Connolly (612/766-7806) remains at Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402.

The NFL was also represented by the following lawyers (among others):

Paul Tagliabue, Herbert Dym, Jeffrey Pash, and Neil Roman of Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004. Mr. Tagliabue (212/450-2025) is now the Commissioner of the NFL, and Jeffrey Pash (212/450-2033) is now Executive Vice President. The address for both is National Football League, 280 Park Avenue, New York, NY 10017. Mr. Dym (202/244-6644) is now retired. He resides at 3978 Georgetown Court, NW, Washington, DC 20007. Mr. Roman (202/662-5695) is still at Covington.

Frank Rothman, Shepard Goldfein, and William H. Daly of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036. Mr. Rothman is now deceased. Mr. Goldfein (212/735-3610) is still at Skadden. Mr. Daly (212/789-2120) is now Executive Vice President and Chief Legal Officer of the National Hockey League, 1251 Sixth Avenue, 47th Floor, New York, NY 10020.

The NFLPA was represented by the following lawyers (among others):

James W. Quinn, Jeffrey L. Kessler, and Craig M.J. Allely of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153. Mr. Quinn (212/310-8385) is still at Weil, Gotshal. Mr. Kessler (212/259-8050) is now at Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, NY 10019. Mr. Allely (303/295-8247) is now at Holland & Hart LLP, 555 Seventeenth Street, Suite 3200, Denver, CO 80202.

Edward M. Glennon, Carol T. Rieger, and Luke H. Terhaar of Lindquist & Vennum PLLP, 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. Mr. Glennon (612/371-3246) is still at Lindquist. Ms. Rieger (370/325-7393) is retired from legal practice and living in Colorado. I believe that her address is 403 Second Street, Ouray, CO 81427. Mr. Terhaar is deceased.

d. *M.C. v. Reverend Larry Houg, et al.* This case was typical of many lawsuits in which I represented a religious organization that had been sued by an adult who had engaged in a consensual sexual relationship with a pastor. The plaintiff always alleged that, because of the disparity in power between the pastor and her or him, the consent was invalid, and the sexual contact was therefore abusive. These "adult affair" cases made up the large majority of my clergy sexual misconduct practice.

M.C. was an adult woman who was a member of Bethel Lutheran Church in Lester Prairie, Minnesota. M.C. and Bethel's pastor, the Rev. Larry Houg, engaged in a sexual relationship from February 1985 until March 1986. At the time, Bethel was a congregation of the American Lutheran Church, a predecessor of the Evangelical Lutheran Church in America ("ELCA"). No one affiliated with Bethel or the ELCA knew or suspected that Pastor Houg had engaged in sexual misconduct of any kind until after his relationship with M.C. had ended. Promptly after Pastor Houg's misconduct was reported, Pastor Houg was removed from the clergy roster of the ELCA.

M.C. filed suit against Houg, Bethel, and the ELCA in August 1989 in McLeod County (Minnesota) District Court. Judge Leroy W. Yost presided over the case, which was assigned Court File No. 22867. I represented the ELCA. After two years of discovery, I brought a series of three partial summary judgment motions. The first motion was granted; the two other motions were pending when the remaining claims against the ELCA were settled in August 1991, shortly before the case was scheduled to go to trial.

As best as I can recall, I handled this case by myself, except that, in all of the clergy sexual misconduct and other matters that I handled for the ELCA, I was supervised by the ELCA's General Counsel. David J. Hardy (847/397-1260) served as General Counsel until his retirement in early 1995. He now resides at 317 East Forest Lane, Palatine, IL 60067. He was replaced by Phillip H. Harris (773/380-2805), General Counsel, Evangelical Lutheran Church in America, 8765 West Higgins Road, Chicago, IL 60631.

Pastor Houg was represented by Michael Berens (612/349-6171), Kelly & Berens PA, 80 South Eighth Street, Suite 3720, Minneapolis, MN 55402. Bethel was represented by Gerald L. Maschka (507/625-6600), Maschka, Riedy & Ries, Union Square Business Center, Suite 200, 201 North Broad Street, P.O. Box 7, Mankato, MN 56002.

M.C. was represented by Jeffrey R. Anderson (651/227-9990), now of Jeff Anderson & Associates PA, E-1000 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101; and Mark Wendorf (651/287-2100), now of Reinhardt, Wendorf & Blanchfield, E-1250 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101.

e. *The Rev. Susan E. Black v. the Rev. William R. Snyder, et al.* The plaintiff, the Rev. Susan E. Black, served for 14 months as the associate pastor at St. John's Lutheran Church of Washburn Park, Minnesota. After she was fired by the congregation, Pastor Black sued the senior pastor (the Rev. William R. Snyder), St. John's, and the Minneapolis Area Synod of the Evangelical Lutheran Church in America, alleging that Pastor Snyder had sexually harassed her and that St. John's and the Synod should be held liable for that harassment.

The lawsuit was filed in July 1990 in Hennepin County (Minnesota) District Court and assigned Court File No. PI 90-12962. Judge Andrew W. Danielson presided over the case. The case produced one published opinion: *Black v. Snyder*, 471 N.W.2d 715 (Minn. App. 1991). The case was tried in September and October 1992. Pastor Black sought about $4 million in damages; after an hour's deliberations, the jury returned a verdict in favor of all defendants.

I represented the Synod and essentially handled the case by myself. I engaged in extensive discovery and motions practice and, as noted, I tried the case for almost five weeks before a jury.

Pastor Snyder was represented by David McKenna of Robins, Kaplan, Miller & Ciresi LLP, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402. He is now deceased. St. John's was represented by Karl L. Cambronne (612/336-2922), now of Chestnut & Cambronne PA, 3700 Campbell Mithun Tower, 222 South Ninth Street, Minneapolis, MN 55402.

Pastor Black was represented by Gerald T. Laurie (952/738-0191), now of Laurie & Laurie PA, 508 East Parkdale Plaza, 1660 South Highway 100, St. Louis Park, MN 55416; and Charles A. Cox (612/338-1414), now of Cox, Goudy, McNulty & Wallace PLLP, 100 North Sixth Street, Suite 676A, Minneapolis, Minnesota 55403.

f. *Star Tribune v. Itasca County Sheriff's Department.* This case was typical of the "access" actions — that is, lawsuits seeking to force the government to disclose information to the public — that I often brought on behalf of the *Star Tribune*, Minnesota's largest newspaper.

On June 19, 1991, two suspects were arrested for the brutal murder of an 18-year-old woman named Carin Streufert. The case had attracted a great deal of publicity, as Ms. Streufert had disappeared while walking home in Grand Rapids, a small, close-knit town in Northern Minnesota. I became involved when Sheriff Robert Serich refused to identify the suspects, even though, as the *Star Tribune*'s reporter reminded him, he was required to do so by the Minnesota Government Data Practices Act.

At 5:00 a.m. the following day, I drove to Grand Rapids and, after trying without success to persuade the sheriff's office and the county attorney's office to disclose the names, I filed a lawsuit against the sheriff in Itasca County (Minnesota) District Court. A day or two later, the sheriff relented and identified the suspects. The *Star Tribune* nevertheless pursued the litigation, eventually receiving a declaration that the sheriff had violated the law and an order requiring the sheriff to pay the *Star Tribune*'s attorney's fees. The publisher of the *Star Tribune* later wrote a column describing my work on behalf of the newspaper. *See* Joel R. Kramer, *The need for free information*, STAR TRIB., Dec. 20, 1992, at 34A.

I do not have any papers relating to this lawsuit, and I do not recall the names of either the judge who initially presided over the case or the attorneys who represented the sheriff. After the sheriff released the names, the case was transferred to Judge Russell Anderson of Polk County (Minnesota) District Court, and one of my colleagues — John P. Borger (612/766-7501) — took over responsibility for the case. He is still at Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402. In all of the work that I did for the *Star Tribune*, I was supervised by the newspaper's General Counsel, Randy M. Lebedoff (651/229-1450). She is now General Counsel of Twin Cities Public Television, 172 East Fourth Street, St. Paul, MN 55101.

g. *Disciplinary Proceeding Against the Rev. Wendell Henkenmeier.* I spent a substantial amount of time in practice helping religious organizations to discipline or remove pastors who had been accused of sexual or other misconduct. This work involved counseling church leaders, conducting investigations, drafting separation agreements, and responding to threats of litigation from pastors and their attorneys. Most pastors would eventually resign, but some would not, and, in a few cases, I had to represent a church in a formal disciplinary proceeding against a pastor.

This was the first such case I handled — and the first case in which a synod of the Evangelical Lutheran Church in America ("ELCA") sought to have removed from ministry a pastor accused of sexual misconduct. The case was an important one for many reasons, and it received a great deal of attention inside and outside of the ELCA.

The Rev. Wendell Henkenmeier was the pastor of Clifton Lutheran Church in Marblehead, Massachusetts. He was accused by five women of committing sexual and other misconduct in the course of counseling with them. He denied the charges and refused to resign. Bishop Robert Isaksen of the New England Synod of the ELCA then filed formal charges against him. In the ELCA, charges against a pastor are tried before a 12-member panel of clergy and laypersons, which functions very much like a jury. The proceeding also looks very much like a jury trial, with opening statements, testimony from witnesses, the introduction of other evidence, closing arguments, and a verdict from the panel. A hearing officer presides, and a court reporter transcribes the proceeding.

I was asked by Bishop Isaksen to act as the "prosecutor" in this matter. After several weeks of investigation and interviews, and after briefing and arguing various pretrial motions, I spent the week of May 18, 1992, in Massachusetts trying the case against Pastor Henkenmeier. I believe that the trial lasted five or six days. I called many witnesses, including the five complainants, relatives of the five complainants, Bishop Isaksen, and an expert witness. Pastor Henkenmeier's attorney responded by calling many witnesses of her own. At the end of the proceeding, the panel found Pastor Henkenmeier guilty of all charges and removed him from the clergy roster of the ELCA.

The hearing officer who presided over this matter was Harold R. Lohr (978/838-2933). He is now retired and living at 47 Brook Lane, Berlin, MA 01503.

I was assisted in this matter by Theresa H. Keninger (641/621-1000), who (I believe) is now Counsel to Pella Corporation, 102 Main Street, Pella, IA 50219.

Pastor Henkenmeier was represented by Celeste R. Niarchos (978/745-1188), 125 Washington Street, Suite 201, Salem, MA 01970.

h. *Roger D. Berglund, M.D. v. East Range Clinics, Ltd.* Dr. Roger D. Berglund was an ophthalmologist employed by East Range Clinics, Ltd. ("Clinic") in Virginia, Minnesota. Dr. Berglund was fired in 1993 after a dispute over the income that Dr. Berglund was beginning to earn from refractive surgery, then a relatively new but potentially lucrative procedure. Dr. Berglund's employment contract contained a restrictive covenant — triggered whether he resigned or was fired — that purported to bar him from practicing medicine for three years within 35 miles of the Clinic.

Dr. Berglund retained me to represent him. In July 1993, we sued the Clinic in St. Louis County (Minnesota) District Court and sought an order compelling the Clinic to arbitrate the

validity of the restrictive covenant. The case was assigned to Judge Robert F. Berger. The Clinic resisted our motion and sought both preliminary and permanent injunctions enforcing the restrictive covenant. Judge Berger denied the Clinic's request for a permanent injunction, granted its request for a preliminary injunction, and granted our request to order the matter arbitrated.

In September 1993, I tried the case before a panel of three arbitrators. The proceeding lasted a day or two and involved testimony from several witnesses. The panel eventually agreed that, in almost all respects, the restrictive covenant was unenforceable. I believe that I then successfully sought an order from Judge Berger confirming the arbitrators' decision.

The arbitration panel was headed by retired judge Nicholas S. Chanak, who is now deceased. One of the other arbitrators was Thomas F. Andrew (218/722-1764), of Brown, Andrew, Signorelli & Zallar, PA, 300 Alworth Building, 306 West Superior Street, Duluth, MN 55802. I do not recall the name of the third arbitrator.

As best as I can recall, I handled the case from start to finish by myself. The Clinic was represented by Patrick J. Roche (218/749-1962) of The Trenti Law Firm, 1000 Lincoln Building, 225 First Street North, Virginia, MN 55792.

i. *P.M.B. v. Pastor David L. Anderson et al.* This case was typical of the clergy sexual abuse lawsuits that I handled in which someone who had been abused as a child brought suit years or even decades later against the pastor and the religious organizations with which the pastor was affiliated.

P.M.B. was sexually abused by the Rev. David L. Anderson from 1977 to 1979. At that time, P.M.B. was a member of Trinity Lutheran Church in Moorhead, Minnesota, and Pastor Anderson served as the congregation's senior pastor. Trinity was a congregation of the American Lutheran Church, a predecessor of the Evangelical Lutheran Church in America ("ELCA"). No one affiliated with Trinity or the ELCA knew or suspected that Pastor Anderson had engaged in sexual misconduct with P.M.B. or any other minor until many years after P.M.B.'s sexual abuse had ended. Promptly after Pastor Anderson's behavior was reported, Pastor Anderson was removed from the clergy roster of the ELCA.

In August 1993, P.M.B. filed suit against Anderson, Trinity, and the ELCA in the United States District Court for the District of Minnesota. The case was assigned Civil No. 4-93-817 and referred to Judge David S. Doty.

I represented the ELCA. I handled the case by myself. After extensive discovery, I moved for summary judgment in August 1994. The motion was granted by Judge Doty on September 7, 1994. P.M.B. appealed to the Eighth Circuit, and I briefed and argued that appeal before a panel composed of Judges Richard S. Arnold, George G. Fagg, and John R. Gibson. The panel affirmed the dismissal of the lawsuit. *P.M.B. v. Anderson*, No. 94-3395, 1995 WL 431340 (8th Cir. July 24, 1995).

Pastor Anderson was represented by Theodore J. Collins (651/227-0611) of Collins, Buckley, Sauntry & Haugh PLLP, W-1100 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101. Trinity was represented by Richard N. Jeffries and Thomas R. Olson (701/280-2300) of Jeffries, Olson & Flom PA, 1325 South 23rd Street, Fargo, ND 58103.

P.M.B. was represented by Stephen F. Rufer (218/736-5493) of Pemberton, Sorlie, Rufer & Kershner PLLP, Law Office Building, 110 North Mill Street, P.O. Box 866, Fergus Falls, MN 56538.

j. *National Basketball Association, et al. v. Minnesota Professional Basketball Limited Partnership, et al.* My firm represented Minnesota Professional Basketball Limited Partnership ("MPBLP"), which owned the Minnesota Timberwolves professional basketball franchise. In June 1994, MPBLP agreed to sell the franchise to Top Rank of Louisiana, Inc. ("Top Rank"), which planned to move the franchise to New Orleans. The agreement was contingent on the sale being approved by the National Basketball Association ("NBA").

On June 15, 1994, a committee of the Board of Governors of the NBA voted to recommend that the full Board reject the proposed sale of the Timberwolves. That same day, the NBA sued MPBLP and Top Rank in the United States District Court for the District of Minnesota. The case was assigned to Judge James M. Rosenbaum.

A few days later, after the full Board of Governors rejected the proposed sale, MPBLP exercised its option to terminate the sale agreement, filed an answer to the NBA's complaint, and filed a cross-claim against Top Rank, seeking, inter alia, an injunction prohibiting Top Rank from attempting to enforce the sale agreement. Top Rank responded by suing the NBA and MPBLP in a state court in Louisiana, seeking an injunction enforcing the sale agreement.

The case was intensively litigated — in both Minnesota and Louisiana — with various parties seeking various temporary restraining orders and preliminary injunctions against various other parties at various times. I briefed and argued most of the motions heard by Judge Rosenbaum. Two of Judge Rosenbaum's orders were appealed to the Eighth Circuit. I briefed and argued that appeal before a panel composed of Judges George G. Fagg, David R. Hansen, and Roger L. Wollman. The panel's opinion is reported as *National Basketball Association v. Minnesota Professional Basketball Limited Partnership*, 56 F.3d 866 (8th Cir. 1995).

The litigation did not conclude until after I left practice. I do not believe that Top Rank received any relief from either the NBA or MPBLP. I know that MPBLP was successful in terminating the sale agreement and, with NBA approval, selling the team to a Minnesota-based group of investors headed by Glen Taylor.

Three lawyers at my firm — James Fitzmaurice, Daniel J. Connolly, and Jason D. Topp — worked with me on this litigation. Mr. Fitzmaurice is now deceased. Mr. Connolly (612/766-

7806) remains at Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402. I believe that Mr. Topp (612/672-8905) now works as a senior attorney for Qwest Communications, 200 South Fifth Street, Suite 2200, Minneapolis, MN 55402.

The NBA was represented by Shepard Goldfein and William H. Daly of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036. Mr. Goldfein (212/735-3610) is still at Skadden. Mr. Daly (212/789-2120) is now Executive Vice President and Chief Legal Officer of the National Hockey League, 1251 Sixth Avenue, 47th Floor, New York, NY 10020.

Top Rank was represented by Richard A. Lockridge and W. Joseph Bruckner (612/339-6900), Lockridge Grindal Nauen PLLP, 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401.

19. <u>Legal Activities</u>: 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 the nature of your participation in this question; please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I left private practice in 1995 to join the faculty of Notre Dame Law School. At Notre Dame, I taught Civil Procedure I, Civil Procedure II, Evidence, and Sports Law. I was elected "Professor of the Year" by the graduating class of 1999.

I left Notre Dame in 2000 to accept an invitation from the University of St. Thomas to assume primary responsibility for setting up its new law school. I loved teaching at Notre Dame and had much success there, but I accepted the St. Thomas offer for three reasons. First, it presented a once-in-a-lifetime chance to build from the ground up a new law school dedicated to ethics and public service — and, by building that new school, to help influence the legal profession and the broader community for generations to come. Second, I have a young son who has several disabilities, including Down Syndrome, Autism Spectrum Disorder, and Speech Apraxia. He needs complicated and sophisticated services that were not available in Northern Indiana. Finally, my family and I missed Minnesota, where my extended family lives, where I was born and raised, and where my wife and I spent most of our professional careers.

During my first three years at St. Thomas, I had sole or primary responsibility for almost every significant aspect of establishing the new law school, including shaping and expressing the mission; recruiting, hiring, and evaluating the administrators, faculty (regular and adjunct), and staff; administering the present year's budget and planning the budgets for future years; working with various accrediting agencies; designing the curriculum and initiating such programs as the inter-professional clinic, the mentor program (a recent recipient of the ABA's Gambrell Award), and the public-service requirement; working with the architects to design the new law school

building; drafting the rules of faculty governance and other policies and procedures; and acting as the liaison between the law school and numerous local, regional, and national organizations. I was also involved in recruiting the Board of Governors, in cultivating potential donors, and in fundraising.

By 2003, the law school was firmly established, we had succeeded in recruiting a permanent dean from a "Top 25" law school, and I was anxious to get back to teaching and writing, so I resigned as Associate Dean. St. Thomas rewarded me for my efforts by giving me the first endowed chair at the law school and by allowing me to take a sabbatical during the 2003–2004 academic year. (St. Thomas has also honored me by naming one of the rooms in the law building after me.) In 2004, I returned to full-time teaching and research. I teach Civil Procedure and Evidence.

My scholarship as a law professor has focused on the federal rules of practice and procedure. My primary scholarly activity has been maintaining Volume 16A of the *Federal Practice and Procedure* treatise (commonly referred to as "Wright & Miller"). I was invited to replace Charles Alan Wright as the lead author of this volume, following Professor Wright's death in 2000. I have written several annual supplements for the volume, and I am currently working on the fourth edition. I have also written and spoken frequently about appellate procedure, a topic that is related to my work as Reporter to the Advisory Committee on the Federal Rules of Appellate Procedure. (That work is described below.)

Two other topics have been the focus of my scholarly activity. I have written and spoken frequently about legal ethics and the practice of law. I am perhaps best known for being critical of the materialism and workaholism that are prevalent in the largest and most powerful law firms in New York and other major cities. I have urged lawyers in those firms and elsewhere to live balanced lives and use their legal training not just to make money, but to serve society. I have also written and spoken about tort and employment litigation against religious organizations, a topic that obviously relates to my experience in private practice.

In 1997, I was appointed by Chief Justice William H. Rehnquist to serve as the Reporter to the Advisory Committee on the Federal Rules of Appellate Procedure. I continue to hold that position. I have worked under two chairs: Judge Will L. Garwood of the United States Court of Appeals for the Fifth Circuit and Judge Samuel A. Alito, Jr. of the United States Court of Appeals for the Third Circuit. A long-time member of the Advisory Committee, Judge John G. Roberts, Jr. of the United States Court of Appeals for the D.C. Circuit, was scheduled to take over as chair on October 1, 2005. But, in light of Judge Roberts's elevation to the United States Supreme Court, the job has instead gone to another Committee member: Judge Carl E. Stewart of the United States Court of Appeals for the Fifth Circuit.

In my capacity as Reporter, I have spent hundreds of hours over the past eight years working with federal appellate judges, federal trial judges, state appellate judges, and prominent litigators on the federal rules of practice and procedure. Most of my time has been devoted to

working on the Federal Rules of Appellate Procedure, but I have also devoted considerable effort to working on the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Rules of Bankruptcy Procedure. In part, this is because I attend every meeting of the Standing Committee on Rules of Practice and Procedure, which must approve every amendment to every rule of practice and procedure. And in part, this is because I have worked with the chairs, reporters, and members of the other advisory committees on numerous joint projects.

Reporters to advisory committees are often asked to provide support to other Judicial Conference committees. I have been no exception. I have served in the following roles:

Consultant, Subcommittee on Technology. This Subcommittee includes members from all five advisory committees and other Judicial Conference committees. It is responsible for addressing electronic filing, electronic service, and other issues confronted by the federal courts in light of rapidly changing technology. The Subcommittee has been chaired by attorney Gene W. Lafitte of Liskow & Lewis in New Orleans and by Judge Sidney A. Fitzwater of the United States District Court for the Northern District of Texas.

Member, Subcommittee on Attorney Conduct. This Subcommittee, consisting of members from all five advisory committees, the Department of Justice, and other organizations, was formed for two reasons. First, the Standing Committee was concerned that the district courts had implemented a large number of local rules governing the professional conduct of attorneys — local rules that were, on the whole, vague, confusing, and conflicting. Second, the Justice Department and several state supreme courts became involved in a heated controversy over the interpretation and enforcement of Model Rule 4.2. Some states had interpreted Model Rule 4.2 to prohibit attorneys working for law enforcement agencies from having ex parte contacts with the employees of organizations that were under criminal investigation. The Justice Department turned to the rules committees for help. The Subcommittee has considered a number of proposals, ranging from, on one extreme, enacting a comprehensive "Federal Rules of Attorney Conduct" to, on the other extreme, tinkering with the "conduct unbecoming" standard of the federal rules. The Subcommittee was led from 1999 to 2002 by Judge Anthony J. Scirica of the United States Court of Appeals for the Third Circuit. The Subcommittee has been dormant since 2002.

Consultant, E-Government Subcommittee. This Subcommittee, consisting of members from all five advisory committees and other Judicial Conference committees, was formed in response to the directive in the E-Government Act of 2002 that the rules of practice and procedure be amended "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The Subcommittee has assisted the five advisory committees in drafting electronic privacy rules for the district courts and the courts of appeals. Those rules have recently been published for comment. The Subcommittee is chaired by Judge Sidney A. Fitzwater of the United States District Court for the Northern District of Texas.

Reporter, Subcommittee on Time-Computation Rules. This newly-appointed Subcommittee, consisting of members from all five advisory committees, will seek to simplify and make consistent the unnecessarily complicated and sometimes inconsistent provisions regarding calculating deadlines that are found in the Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules. Judge David F. Levi of the United States District Court for the Eastern District of California, the Chair of the Standing Committee, has asked me to serve as the Subcommittee's Reporter. Judge Mark R. Kravitz of the United States District Court for the District of Connecticut is chairing the Subcommittee.

Finally, I note that I have been involved in a variety of activities designed to improve the legal profession. I am a member of the American Law Institute and the Association of American Law Schools. I have been a member of an American Inn of Court in both Indiana and Minnesota and of national, state, and local bar associations. I worked with C-SPAN for a couple of years to try to open the United States Supreme Court to television coverage. I have spoken on countless occasions to bar association meetings, continuing legal education programs, and meetings of civic or community groups. I served as Reporter at the 2005 National Conference on Appellate Justice. And I have often judged moot-court competitions.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

If confirmed, I would resolve any conflict of interest by following the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and any other relevant statutes. I would also follow the guidelines promulgated by the Judicial Conference of the United States. Because I have not practiced law for over ten years, and because I have done very little consulting as a law professor, I do not expect many conflicts of interest to arise.

3. **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.

4. **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, patents, 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.)**

   A copy of the financial disclosure report is attached.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

   A copy of the financial net worth statement is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1978, I attended the Democratic-Farmer-Labor ("DFL") caucus in my precinct.

In 1980, I volunteered to help with a day-long campaign appearance by Sen. Edward M. Kennedy in my hometown. I helped to organize the appearance and drove a car in the Senator's motorcade.

In 1980, I again attended the DFL caucus in my precinct. I was elected as a delegate to the St. Louis County DFL convention. At that convention, I was elected as an alternate delegate to the Minnesota State DFL Convention.

In the summer of 1980, I interned for Sen. David F. Durenberger. I joined his staff a year later as a Legislative Aide, and helped to cover the Finance and Judiciary Committees. I worked for the Senator until September 1982, when I left to go to law school.

In law school, I was a member of the Ripon Society, "a Republican public policy advocacy organization representing all Americans through moderate, progressive policy formation."

In 1988, I attended the Republican caucus in my precinct. I was elected as a delegate to the Hennepin County (Minnesota) Republican convention.

In 2000 and again in 2004, I was a member of Law Professors for Bush-Cheney.

At various times over the past 20 years, I have allowed my name to be used in advertisements for candidates for judicial office in Minnesota, including Chief Justice Kathleen Blatz and Justice Paul H. Anderson. I do not recall which other candidates I publicly supported in this way.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Schiltz, Patrick J	U.S. District Court, Minnesota	12/16/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge -- Nominee	5. ReportType (check appropriate type) (•) Nomination, Date 12/14/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 12/1/2005
7. Chambers or Office Address UST School of Law 1000 LaSalle Ave. #MSL 400 Minneapolis, MN 55403	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	St. Thomas More Chair in Law	University of St. Thomas School of Law

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

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schiltz, Patrick J	12/16/2005

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	University of St. Thomas School of Law (salary and summer research stipend)	192,060.23
2.	2004	University of St. Thomas School of Law (salary and summer research stipend)	193,991.00
3.	2003	University of St. Thomas School of Law (salary and summer research stipend)	192,630.00
4.	2005	West Publishing (payment for annual supplement to treatise)	5,500.00
5.	2004	West Publishing (payment for annual supplement to treatise)	5,500.00
6.	2003	West Publishing (payment for annual supplement to treatise)	5,000.00
7.	2005	University of Dayton (honorarium)	1,000.00
8.	2005	Washington and Lee University School of Law (honorarium)	1,000.00
9.	2004	Evangelical Lutheran Church in America (honorarium)	2,000.00

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2005	University of St. Thomas School of Law (salary and summer research stipend)
2.	2004	University of St. Thomas School of Law (salary and summer research stipend)
3.	2005	West Publishing (payment for work on casebook supplement)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schiltz, Patrick J	12/16/2005

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

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

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schiltz, Patrick J	12/16/2005

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ **NONE** - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Wells Fargo Bank	Credit Card	J

FINANCIAL DISCLOSURE REPORT
Page 1 of 3

Name of Person Reporting	Date of Report
Schiltz, Patrick J	12/16/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1. BANK ACCOUNTS					Exempt				
2. Wells Fargo Bank Accounts	B	Interest	M	T					
3. U.S. Senate Federal Credit Union Accounts	A	Interest	J	T					
4. FAEGRE & BENSON RETIREMENT ACCOUNT #1									
5. -- Wells Fargo Adv Index Fund		None	M	T					
6. FAEGRE & BENSON RETIREMENT ACCOUNT #2									
7. -- Wells Fargo Adv Index Fund		None	L	T					
8. UNIVERSITY OF ST. THOMAS 403(b) ACCOUNT #1									
9. -- CREF Stock Fund		None	M	T					
10. -- CREF Growth Fund		None	L	T					
11. -- CREF Bond Market Fund		None	K	T					
12. UNIVERSITY OF ST. THOMAS 403(b) ACCOUNT #2									
13. -- CREF Stock Fund		None	M	T					
14. -- CREF Growth Fund		None	K	T					
15. -- CREF Bond Market Fund		None	K	T					
16. IRA #1									
17. -- Oakmark Fund	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 2 of 3

Name of Person Reporting	Date of Report
Schiltz, Patrick J	12/16/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. IRA #2									
19. -- Oakmark Fund	A	Dividend	K	T					
20. MUTUAL FUNDS									
21. Credit Suisse Fixed Income Fund	A	Dividend	J	T					
22. Fidelity New Markets Income Fund	B	Dividend	K	T					
23. Janus Fund		None							
24. Janus Mercury Fund	A	Dividend							
25. Janus Olympus Fund		None							
26. Janus Worldwide Fund	A	Dividend	K	T					
27. Northeast Investors Trust	A	Dividend	J	T					
28. Oakmark Fund	A	Dividend	J	T					
29. T. Rowe Price Small-Cap Stock Fund	A	Dividend	J	T					
30. T. Rowe Price Tax-Free High Yield Fund	B	Dividend	K	T					
31. Tweedy Browne American Value Fund	A	Dividend	J	T					
32. Vanguard GNMA Fund	B	Dividend	K	T					
33. Vanguard Intermediate-Term Tax-Exempt Fund	A	Dividend	J	T					
34. Vanguard Limited-Term Tax-Exempt Fund	A	Dividend	J	T					
35. Vanguard REIT Index Fund	B	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 3

Name of Person Reporting	Date of Report
Schiltz, Patrick J	12/16/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
36. OTHER INVESTMENTS									
37. **F&B Building Partnership**		None	J	W					**See note in Part VIII**

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

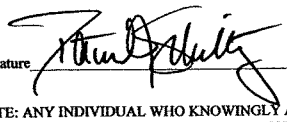
Part VII, Page 3, Line 37: The F&B Building Partnership is a Minnesota general partnership consisting of all current and former partners of Faegre & Benson LLP. The F&B Building Partnership, in turn, is a limited partner in the Sixth & Marquette Partnership, which owns the Wells Fargo Center in Minneapolis, Minnesota. The F&B Building Partnership distributes current year's income only to current F&B partners, so I receive no income from the partnership. If the Wells Fargo Center is ever sold, both current and former F&B partners would receive an allocation of any gains from that sale. Thus, if the Wells Fargo Center is not sold during my lifetime, I will never receive any money from the F&B Building Partnership. Even if the Wells Fargo Center is sold during my lifetime, my share of the gains from that sale would likely be miniscule, as I was a partner at Faegre & Benson for only two years, and the size of one's share depends on the length of one's service as an Faegre & Benson partner.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schiltz, Patrick J	12/16/2005

IX. CERTIFICATION.

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

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

Signature  Date 12/16/05

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	114	486	19	Notes payable to banks-secured		0	
U.S. Government securities-add schedule		0		Notes payable to banks-unsecured		0	
Listed securities-add schedule		0		Notes payable to relatives		0	
Unlisted securities--add schedule		0		Notes payable to others		0	
Accounts and notes receivable:		0		Accounts and bills due		0	
Due from relatives and friends		0		Unpaid income tax		0	
Due from others		0		Other unpaid income and interest		0	
Doubtful		0		Real estate mortgages payable-add schedule	402	347	56
Real estate owned-add schedule	550	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable		0		Other debts-itemize:			
Autos and other personal property	50	000	00	Car loan	21	462	13
Cash value-life insurance		0					
Other assets itemize:							
Retirement accounts (401(k), 403(b), etc.)	771	735	14				
Mutual funds	166	996	22				
				Total liabilities	423	809	69
				Net Worth	1,229	407	86
Total Assets	1,653	217	55	Total liabilities and net worth	1,653	217	55
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		0		Are any assets pledged? (Add schedule)		No	
On leases or contracts		0		Are you defendant in any suits or legal actions?		No	
Legal Claims		0		Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax		0					
Other special debt		0					

Patrick J. Schiltz

FINANCIAL NET WORTH STATEMENT – SCHEDULES

ASSETS:

Real Estate Owned	$550,000.00

Personal residence in Minnetonka, Minnesota -- est. value: $550,000.00

LIABILITIES:

Real Estate Mortgage Payable On personal residence	$402,347.56

III. GENERAL (PUBLIC)

1. 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 not practiced law since becoming a law professor in 1995, and thus I have not done traditional pro bono work in the past ten years. I have, however, devoted much of my career as a law professor to promoting public service. Most significantly, I gave up a job at a "top 25" law school (Notre Dame) in order to help found a new law school (St. Thomas) dedicated to public service and ethics. I helped to shape the mission, faculty, staff, curriculum, and other aspects of the new law school so that students would do public service while in law school and serve the public after graduation. For example, I decided that St. Thomas would adopt a mandatory public-service program, making St. Thomas one of the few law schools in the country that require students to provide public service before graduating. The results so far have been promising. Not only have St. Thomas students (each of whom must complete 50 hours of public service before graduation) provided thousands of hours of service to the community, but St. Thomas graduates have sought public-interest jobs in far greater numbers than the graduates of other law schools.

At St. Thomas, I also helped to establish and raise money for our inter-professional clinic, which provides legal services to the poor. I have supported — with both my money and my time — the Minnesota Justice Foundation and the Legal Aid Society of Minneapolis. I have helped my students with public-interest projects. And I have devoted many hours to working on law-reform efforts — including efforts to make the courts more accessible — under the auspices of the Judicial Conference of the United States.

At Notre Dame, I also tried to promote public service. I supported — again with both my money and my time — the Notre Dame Public Interest Law Foundation and the Notre Dame Social Justice Forum. I helped plan and spoke at an annual event at the beginning of the school year designed to encourage students to do public service. Finally, at Notre Dame, as at St. Thomas, I assisted my students with public-interest projects and devoted many hours to working on law-reform efforts on behalf of the Judicial Conference of the United States.

In private practice, I provided hundreds of hours of free legal assistance to religious organizations and other non-profits when the clergy sexual abuse crisis first received significant attention in the late 1980s and early 1990s. Churches and other religious organizations — many of them operating on shoestring budgets — were suddenly confronted with significant human and legal problems, but few could afford to hire lawyers to give them advice. I worked for free for religious organizations that needed advice about particular cases or that needed help drafting policies and procedures. I also traveled throughout the United States at no charge to speak to religious leaders about the importance of removing dangerous pastors from ministry, providing support to victims, and being open and honest about reports of clergy sexual misconduct.

In addition to this work, I did some traditional pro bono work. I recall two cases in particular. In the first, I briefed an appeal to the United States Court of Appeals for the Eighth Circuit on behalf of Terry Jon Martin, an indigent prisoner who had been convicted of drug offenses. I argued that Mr. Martin's vehicle had been searched in violation of the Fourth Amendment and therefore evidence seized from the car should not have been introduced against him. In the second, I briefed and argued a summary judgment motion in the United States District Court for the District of Minnesota on behalf of an indigent prisoner named Clark Albert Bailey. I argued that the Minnesota Department of Corrections violated the Ex Post Facto Clause when it changed its regulations in a way that lengthened the time that Mr. Bailey would have to serve in prison. I should note that I also participated in a mentor program established by my law firm, through which I served as a mentor to an "at risk" young man who was attending an inner-city school.

In law school, I was a member of the Harvard Defenders — a group of students who volunteered to assist indigent criminal defendants. I cannot recall my activities, except that I remember representing a woman who was charged with forging prescriptions.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What [have you] done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

To the best of my knowledge, there is no formal selection commission in my jurisdiction to recommend federal judicial candidates.

In July 2005, I learned from media reports that Judge Richard H. Kyle had taken senior status. I submitted an application to Senator Norm Coleman's office on July 25. I was interviewed by Senator Coleman in his St. Paul office on August 1. Two weeks later, the White House Counsel's Office contacted me to arrange for an interview in Washington.

On August 24, I was interviewed at the White House by lawyers from the White House Counsel's Office and the Department of Justice. On September 21, the White House informed me that the President had tentatively decided to nominate me and would make a final decision following a full background investigation. After completing the nomination paperwork and undergoing a background investigation, I was nominated on December 14.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

I emphatically believe that it is the responsibility of judges to interpret and enforce the law. That means that, while judges will inevitably disagree about particular legal questions, they must look for the answers to those questions outside of themselves. A judge's job, after all, is to determine the meaning of text written by others — whether those "others" are the framers and

ratifiers of the Constitution (or one of its amendments), the members of Congress who approved a statute, the agency officials who promulgated a regulation, or the judges of a higher court who issued an opinion. The judge's own political preferences — the judge's own views about what is right or wrong, good or bad, fair or unfair — are simply irrelevant to interpreting and enforcing a law written by others.

When a judge is influenced by his or her own policy preferences, the judge does more than rely on irrelevant information. The judge also undermines the separation of powers that is at the heart of our constitutional democracy and, in a very real sense, the judge undermines the ability of a free people to govern itself. We entrust to our elected representatives — not to judges — the responsibility for making fundamental policy choices. Those choices must be respected, except, of course, when they clearly violate the Constitution. When judges ignore the meaning of a text — or when judges treat ambiguities or gaps in a text as an invitation to act as a "super legislator" — then unelected, unaccountable judges end up making decisions that belong to elected, accountable representatives.

Most of the attention devoted to judicial activism has focused on judges who "discover" rights that cannot reasonably be said to exist under the Constitution, a statute, or a judicial precedent. But a judge who fails to fully and vigorously enforce a constitutional or statutory right — or who disrespects binding precedent by applying it in an unreasonably narrow or cramped manner — betrays his or her oath of office just as much as a judge who purports to find rights where none exists. A judge who honestly enforces a conservative statute will reach a conservative result, and a judge who honestly enforces a liberal statute will reach a liberal result. What should matter to the judge is not that the result is conservative or liberal, but that the result reflects the policy choices made by those elected to make policy choices — individuals who have taken the same oath as the judge and should be presumed to have acted constitutionally.

I suspect that some judges who fail adequately to honor the policy choices made by Congress do so in part because of a lack of respect for politicians or for the legislative process. I do not share that lack of respect. I have been fortunate to work both in the legislative branch (as a legislative aide to a United States Senator) and in the judicial branch (as a law clerk to a Supreme Court justice). My experience convinces me that members of Congress are in a much better position to make fundamental policy choices — not just as a matter of political theory, but as a matter of institutional competence. In addition to having the means to conduct wide-ranging investigations and to receive wide-ranging input, members of Congress are exquisitely attuned to the views of their constituents. One of the lasting memories that I have of my time as a legislative aide is riding the trolley to or from the Capitol and listening to Senators talk knowledgeably about the residents of even the smallest hamlets in even the most remote corners of their home states.

I should emphasize, in closing, that the importance of the rule of law is not just an abstract concern for me. It is personal. I have a son who is severely disabled. Federal and state laws extend a host of protections to him, but, like many families of vulnerable people, we have

learned that there is a large gap between the protections that the law promises and the protections that vulnerable people actually receive. My son is fortunate: His mother and father are both Ivy-League educated lawyers who are able to fight to make sure that he gets all that the law promises him. But even we succeed only because school administrators and other officials know that, if necessary, we can seek the help of a federal judge, and that the judge will enforce the law whether or not the judge personally believes that the law is wise. Right now, my son depends on the rule of law to thrive. Someday, after his mother and I are gone, he may very well depend on the rule of law to survive. My commitment to the rule of law is a deeply personal one, and, if I am confirmed, that commitment will be reflected in all that I do as a judge.

AFFIDAVIT

I, PATRICK JOSEPH SCHILTZ, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

DEC. 19, 2005
(DATE)

(NAME)

SCOTT G. SWANSON
COMM. #6131963
Notary Public
State of Minnesota
My Commission Expires 1/31/2010

(NOTARY)

Senator COBURN. Well, thank you for being here.

I have the wonderful opportunity to do all the questioning and save the Senator from Idaho.

Judge Smith, how has your job as a State trial judge prepared you to serve as a Federal appellate judge?

Judge SMITH. Mr. Chairman, a State trial judge has the opportunity, as you well know, to be involved in Federal issues as well as State issues on a trial basis, in a trial situation, and, therefore, I see Federal issues on a regular basis.

But I have done one other thing in Idaho to especially assist me. It is often the case when the Federal judges will refer a case from the Federal court to my court for mediation. So I have mediated, I would suggest, 20 to 30 Federal cases as a part of helping the Federal judges with their caseloads each year as I have been a State judge.

So I think all of those are ways that I have been able to prepare.

Senator COBURN. In Idaho, I understand that judges may permit jurors to ask questions of witnesses during a trial. You have been outspoken about your belief that judges should not allow this practice. Could you explain your thoughts on this?

Judge SMITH. Thank you. My worry about this is that it seems to me that the system was based on two pretty fundamental principles of law that are essential to us, providing to each one of the litigants the special opportunity to come to our courtroom, the first being a due process consideration, that of having a burden of proof which is important that the burden of proof be satisfied in order for someone to prevail. I believe that allowing the jurors to then ask the questions allows the parties to escape the burden of proof that they might have otherwise necessary. I think that that is one thing that across the Nation people are very worried about as it relates to criminal proceedings. But I would suggest the same in civil proceedings.

The second is a constitutional question, and that is the right for a defendant to have a fair trial, to have the jury be able to go through the whole of the trial and not make up their mind and not become advocates, but to remain dispassionate. And by asking the questions, they then become passionate because they feel like their question is important, and that is the reason that I have stood against this.

Senator COBURN. Thank you.

One other question that I have for you. One of the questions we ask Supreme Court nominees, and myself and Senator Kyl specifically, is the frame of reference with which you make a decision based in law. Would you characterize what will be your frame of reference in terms of making decisions on the Ninth Circuit? And I am talking about the Constitution, treaties, and statutes.

Judge SMITH. Well, my frame of reference is to apply the law as it is to each one of the given case situations that I have. It is my understanding—and I truly believe it to be the case—that when you review statutes, you look at the plain meaning of the statutes. And if, in fact, you can find the statute to be something that would be ambiguous, then you would look at other situations, whether it would be legislative history or those kind of things.

But in all of that kind of review and in all my review, I am very cognizant of the fact that precedent is very important and that we apply the constitutional precedent to the case law and we follow the precedent as it is.

Senator COBURN. All right. Thank you.

Judge SMITH. I hope that was the answer—or the question you were asking.

Senator COBURN. It is, as well as what I normally would followup with: Is there a basis for foreign law in the making of decisions by a U.S. appellate judge?

Judge SMITH. Mr. Chairman, in my mind, I don't find in interpreting the law as it is and seeing exactly the plain language of it and then applying the Constitution to it, I am not aware of how the foreign law consideration would come into that interpretation.

Senator COBURN. I think you got it right.

Professor Schiltz, you have had a great career. I understand you worked with C–SPAN to try to open the Supreme Court to television coverage. Would you tell us a little bit about that?

Mr. SCHILTZ. Shortly after I clerked for Justice Scalia, C–SPAN put together a panel of former Supreme Court clerks of the then-living active Justices to try to brainstorm with us about ways to open the Supreme Court proceedings to television. We obviously did not lobby our particular Justices. It was to give C–SPAN ideas for how they might identify and meet the concerns of the Justices. And so I did that. It involved a couple of meetings here in Washington among us. I believe that the Supreme Court—it is something that, unfortunately, my former boss and I don't see eye to eye on, but I believe that this is one of the most important institutions in our country, and that they can do their work without the American people being able to watch it I personally think is a shame. And I hope that in my lifetime—I expect in my lifetime we will see them televised, as your proceedings are televised.

Senator COBURN. Do you have any opinion on the use of foreign law in adjudicating cases before your court?

Mr. SCHILTZ. There are obviously some instances where I think everybody would agree that reference to foreign law is appropriate, for example, where there is a treaty that specifically incorporates it. But I have to confess, I haven't yet heard a compelling argument for what foreign law would have to do, for example, with interpreting our own Constitution.

Senator COBURN. I would commend you to the statements of Judge Alito and Chief Justice Roberts in response to that. I think that they are fairly straightforward, and I would also remind you that the oath you take, when you are sworn in, will say what you will use. And it is the U.S. Constitution, the statutes, and the treaties, and it doesn't say anything about foreign law.

We will leave the record open for 1 week. The statements of Senators Leahy and Feinstein will be entered into the record, without objection. I appreciate you making the trip. I hope your cold is better. My staff gave me one last week. I am fighting it off. Congratulations on your nominations. We look forward to the process moving through the Judiciary Committee.

Thank you very much.

Judge SMITH. Thank you, Mr. Chairman.

Mr. SCHILTZ. Thank you.
Senator COBURN. The hearing is adjourned.
[Whereupon, at 4:27 p.m., the Committee was adjourned.]
[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Senator Dianne Feinstein on the Nomination of Randy Smith to the 9th Circuit Court of Appeals Judiciary Committee Hearing March 1, 2006

Thank you, Mr. Chairman.

I am compelled to oppose the President's transfer of a judgeship from California to Idaho, as it ignores the judicial needs of the 9th Circuit Court of Appeals and its violates the Court's precedents.

First, I want to be clear that my opposition is not to Judge Randy Smith personally.

My concern is that Californians, who are already severely underrepresented on the 9th Circuit Court of Appeals, will lose yet another judge with this nomination.

There were nearly 10,000 federal appeals in California last year, which is 70% of the 9th Circuit's total appeals. However, only 50% of the Circuit's judgeships, 14 out of 28, are assigned to California.

If Judge Smith is confirmed, California would have only 13 of the 9th Circuit's judgeships. Despite having more than two-thirds of the 9th Circuit's cases, California would have less than half of its judges.

This allocation of judges is both inefficient and unfair. California needs more judges, not fewer.

On the other hand, only 167 federal appeals were filed in Idaho last year, 1.2% of the 9th Circuit's appeals. The one judgeship currently assigned to Idaho is more than enough to handle this modest caseload.

Adding another judgeship in Idaho would give that state 7.2% of the Circuit's judgeships, a percentage of judges six times greater than Idaho's percentage of cases.

When a judgeship is moved from one state to another it should be to a state that needs **more** judges. Taking a judgeship from underrepresented California and allocating it to Idaho makes little sense.

Before the President nominated Judge Smith, I contacted the White House to urge the President to nominate another Californian for this judgeship. Instead the President chose to ignore the judicial needs of the Circuit and Circuit's precedents.

I am truly sorry that Judge Smith is caught in the middle of this, particularly when this situation could have and should have been avoided.

This is not a partisan issue. This is a matter of fairness and the sensible sharing of limited resources. While California is the state losing a needed judgeship today, I would take the same position if any judgeship was moved from a state with a greater need for a judge to a state with a lesser need for a judge.

For example, in April 2003, President Bush nominated Claude Allen of Virginia for a seat previously occupied by Judge Francis Murnaghan of Maryland. Senators Sarbanes and Mikulski opposed this shift of a judgeship from Maryland to Virginia and the Judiciary Committee correctly refused to discharge Mr. Allen's nomination. The nomination ultimately expired at the end of the 108th Congress.

There is no debate that Judge Trott, whose retirement opened this seat on the 9th Circuit, was nominated to be a California judge or that his predecessor was a California judge. The Chief Judge of the 9th Circuit has stated that the "Trott seat was a California seat." As Senator Craig was recently quoted in the Legal Times, "[t]here's no question that Trott was nominated out of California."

Following his confirmation by the Senate, Judge Trott, for his own reasons, chose to locate his judicial chambers in Idaho.

Judge Trott's personal decision to move to Idaho has been used to justify nominating an Idahoan to this seat.

While I respect Judge Trott's decision to locate his chambers in Idaho, his **personal choice** does not transfer a California judgeship to Idaho, and has no bearing on the judicial needs of the 9th Circuit.

Certainly there are times when judgeships should be reallocated within a Court of Appeals. However, such reapportionment should not be haphazard and should be done for good reasons. When judges are moved within a Circuit it should be to states with greater needs for judges, not less.

To allow a judge's personal choice of where to live to change the allocation of future Court of Appeals judgeships sets a dangerous precedent.

As this nomination ignores the judicial needs of the 9th Circuit and the state of California, I must oppose it, and I intend to place a hold upon this nomination.

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on Judicial Nominations
March 1, 2006

Today the Committee will consider the nominations of Judge Norman Randy Smith for a lifetime appoint to the Court of Appeals for the Ninth Circuit.

I understand the concerns of Senators Feinstein and Boxer, as expressed in their January 30, 2006, letter to Chairman Specter, that the confirmation of Judge Smith to the Ninth Circuit would transfer a judgeship from California to Idaho, violating historical precedent. Judge Smith has been nominated to fill the seat last occupied by Judge Stephen Trott, an appointee of President Ronald Reagan from California, whose retirement in 2004 created this vacancy. Judge Trott was from California, where he had practiced for much of his career prior to becoming a judge. In fact, he was nominated to fill the seat of another Californian, Judge Joseph Sneed. At the time of his nomination, while he worked at the Department of Justice in Washington, the Senators from California were consulted and it was understood to be a California seat.

The practice in filling circuit vacancies has been to replace each with a nominee from the same State from which his or her predecessor was nominated. Sometimes an agreement can be worked out among Senators and the White House to proceed with someone from another State within the circuit first, so long as the subsequent nomination comes from the first State. I do not know of any precedent for a judge's personal decision to change his or her personal residence resulted in shifting a circuit seat. Of course the Bush-Cheney White House has attempted to steal a seat before, when it attempted to replace a Maryland Fourth Circuit judge with someone from Virginia. That attempt was unsuccessful.

Last year, there were nearly 10,000 federal appeals to the Ninth Circuit from California, constituting 70 percent of the Circuit's total appeals. California has only half of the Ninth Circuit's judgeships. In contrast, there were only 167 federal appeals filed in Idaho last year, constituting only 1.2 percent of the Ninth Circuit's appeals.

I am sensitive that every State within a circuit should have at least one judge come from that State. I supported legislation to ensure that and to afford Hawaii a seat on the Ninth Circuit. I will defend Idaho's right to a seat on the Ninth Circuit, just as I defend Vermont's right to a seat on the Second Circuit.

I urge President Bush to resolve this impasse by doing the right thing and nominating Judge Smith not for a California seat but for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. In this way his nomination can be considered on the merits.

NOMINATIONS OF MICHAEL A. CHAGARES, OF NEW JERSEY, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT; GRAY HAMPTON MILLER, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; JEFFREY L. SEDGWICK, NOMINEE TO BE DIRECTOR, BUREAU OF JUSTICE STATISTICS, DEPARTMENT OF JUSTICE; AND SHAREE M. FREEMAN, NOMINEE TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE

TUESDAY, MARCH 14, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 3:01 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Jeff Sessions, presiding.

Present: Senators Sessions, Hatch, and Cornyn.

OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. The Committee will come to order.

We are delighted to have each of you with us today. I would offer for the record a statement of Senator Patrick Leahy, the Ranking Member of the Judiciary Committee, without objection.

Today we have a confirmation hearing for two of the President's judicial nominees and two of his executive nominees to serve at the Department of Justice. I hope we can get each of your nominations voted out of Committee shortly and through the Senate as soon as possible.

We are privileged to have a distinguished panel of legislators here, at least Senators at this point, to help us introduce the nominees. Senator Lautenberg and Senator Menendez, our distinguished colleagues from New Jersey, will introduce Mr. Chagares.

Senator Lautenberg, would you like to start off? We thank you for coming; you have introduced quite a number of nominees over the years. It is great to have you back.

PRESENTATION OF MICHAEL A. CHAGARES, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. FRANK LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman. It is always a pleasure to be heard. It is particularly a pleasure when one has the full confidence that the person being recommended is someone we can all be proud of.

I did, however, say to Mr. Michael Chagares that I was curious as to where he was able to rent this beautiful family to make an appearance before—his wife and his four children. And we are delighted to have them here. It is an honor to present your Dad to this Committee.

He is recommended, as we all know, for a seat on the United States Court of Appeals for the Third Circuit. Mr. Chagares is currently in private practice, but he served in the U.S. Attorney's Office in New Jersey for 14 years, despite a relatively youthful appearance. How I envy that.

Through hard work and diligence, he rose to become the head of the Civil Division where he supervised and managed all civil cases on behalf of the United States Government, its agencies and officials. He oversaw litigation, directed legal positions to be taken in court, and approved settlements.

Before he became head of the Civil Division, Mr. Chagares directed the Affirmative Civil Enforcement Unit of the U.S. Attorney's Office for several years. And during his tenure in the U.S. Attorney's Office, Mr. Chagares received a number of awards and commendations for the good work that he did, including two Director's Awards for superior performance as an Assistant U.S. Attorney. Mr. Chagares is a graduate of Seton Hall Law School in Newark, where he also taught as an adjunct professor since 1991.

His familiarity with the Third Circuit goes back to the late 1980's when he worked as a law clerk for Hon. Morton Greenberg, a distinguished member of the Court of Appeals. The Third Circuit is based in Philadelphia, and it considers appeals from Federal district courts in Pennsylvania, New Jersey, and Delaware. And I believe that the members of this Committee would agree with me that this is one of the most important Federal courts in the Nation, and I hope they will agree with me that Mr. Chagares is well qualified.

The last time I introduced a New Jerseyan—and the Chairman made reference—to this Committee, the Chairman asked if I was endorsing the nominee. Today I can say without reservation that I endorse Michael Chagares for the Third Circuit Court of Appeals, and I thank the Senator from Alabama and the Senator from Texas for your own distinguished service and for letting me present this fine candidate to the Committee.

Senator SESSIONS. Thank you, Senator Lautenberg. We appreciate those remarks.

Senator Menendez, we are delighted to have you in the Senate—you are not so fresh anymore, I guess. There have been some interesting days since you have been here, but we are delighted that you are here, and we look forward to hearing from you at this time.

PRESENTATION OF MICHAEL A. CHAGARES, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Thank you, Mr. Chairman. I got a little nervous when you said, "You are not so fresh anymore."

[Laughter.]

Senator SESSIONS. Well, after the House, you know.

Senator MENENDEZ. We are a little bit of a firebrand there. We get tempered when we come to the Senate.

Mr. Chairman, thank you for the opportunity to join with my distinguished and senior colleague from New Jersey, Senator Lautenberg, who has had the privilege of introducing many people from our home State to the Nation's judiciary system and who has been called upon to serve the Nation by this administration. Unlike Senator Lautenberg, who has been in the Senate and introducing New Jerseyans for the past 21 years, this is my first opportunity, so I appreciate the opportunity to be here. I know that the confirmation of a judge to a lifetime appointment is a vital responsibility given to this body, and I know that I take that seriously, and I know that this Committee takes it very seriously as well.

I appreciate the chance to join Senator Lautenberg in introducing Michael Chagares, who has been nominated to replace the current Secretary of Homeland Security, Michael Chertoff, on the U.S. Court of Appeals for the Third Circuit. And we all take pride in the honor that has been bestowed on a fellow New Jerseyan.

Mr. Chagares, who is a New Jersey native, graduated from Gettysburg College and Seton Hall Law School with honors. Upon graduation, as Senator Lautenberg said, he clerked for Judge Greenberg on the Third Circuit. And for over a decade and a half, he has served the public with distinction in the United States Attorney's Office for the District of New Jersey, as well as working in private practice.

Senator Lautenberg mentioned that he is also an adjunct professor at Seton Hall. I would add he is a popular professor of both appellate advocacy and civil trial practice at Seton Hall, and I think that goes as a testament when you can be able to attract a student body that is in the process of pursuing a career in the law to be able to both convey the essence of the subject matter and do it in a way that excites a new generation of lawyers.

As you know, Mr. Chairman, the American Bar Association has rated Mr. Chagares as well qualified for the position that he has been nominated. It is a view that I share as well.

He and his wife, Peggy, as you can see, are proud parents of four children: Caroline, Meredith, Matthew, and Sarah. Sarah has got her priorities right. She is snoozing right now. And I did ask Mr. Chagares if he was aware of the salary that an appellate court judge earns in light of college tuition costs. And he assured me that he had given careful consideration to this subject before accepting the honor of this nomination, which is indeed a high honor.

And so we are pleased to see that people of his quality are willing to serve the Nation in the administration of justice, and we join Senator Lautenberg in commending him to the Committee, and we thank you for the opportunity.

Senator SESSIONS. Thank you very much, Senator Menendez.

We have, I think most of you know, a vote that just started, and the bad news, I will tell everyone that is here, is that they have stacked seven votes to commence at 3:05. So the first one has just started. It takes about 15 minutes or so to get that vote completed. I do not think it is going to be possible for Senators to come and go and keep this hearing ongoing. So we will be able to stay, I would say, until about a little past 3:15, and then we will have to vote and see how fast we can get those seven votes over. But it will be an hour or more, for sure. So I am very sorry that it will take a little while to complete this hearing.

Senator Hutchison, it is great to have you here. We look forward to your comments, and then we will hear from Senator Cornyn also on your nominee from Texas.

PRESENTATION OF GRAY HAMPTON MILLER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you very much, Mr. Chairman, for holding this hearing. I know it will be difficult because of the votes scheduled. I can think of few people who I can more highly recommend for a Federal judgeship than Gray Miller. Senator Cornyn and I interviewed him and other candidates, and he just has so many qualities that we want in Federal judges.

He is a partner today in Fulbright and Jaworski in Houston, and his practice has almost exclusively been in the Federal court system. He headed the firm's Admiralty Department from 1996 to 2004 and was named in Euromoney's Guide to the World's Leading Maritime Lawyers as one of the leading maritime lawyers in the world. He was also included in "Texas Super Lawyer," an article that appeared in Texas Monthly magazine, in which he was recognized as one of the best lawyers in America.

But what really made me want to put him on the Federal bench is he worked his way through law school while serving in the Houston Police Department. He was a police officer from 1969 to 1978, and he went through undergraduate and law school as a police officer working his way through. And when you talk to him, he is a straight shooter. He knows exactly what right is, and he does not veer from that. And I just think that he will bring an experience of being a police officer to the bench, which will be very valuable.

He has also served on the Board of the Texas Department of Mental Health and Retardation. He is a lifetime member of the One Hundred Club of Houston, which is a police support organization for firefighters and police officers who are killed or injured in the line of duty.

He has with him today his wife, Joanne, and their two children, and his daughter-in-law and two granddaughters, and we are very pleased that all of them are here. And, Mr. Chairman, I do hope that the Committee will act favorably on his nomination.

Thank you very much.

Senator SESSIONS. Thank you, Senator Hutchison. I am confident that they will.

It is a pleasure to have Senator Cornyn here, former Justice Cornyn on the Texas Supreme Court, and Attorney General in Texas, and just a tremendously valuable member of this Committee. John, we are glad you are here, and we would love to hear your comments on the nominee.

PRESENTATION OF GRAY HAMPTON MILLER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman.

I want to tell both of our nominees that it is not universally true that people who are nominated to the Federal bench get uniformly high praise during judicial confirmation proceedings, but I anticipate you both will. And it is my pleasure to say a few nice things about Gray Miller, the nominee for the U.S. District Court for the Southern District of Texas.

Senator Hutchison has covered his professional qualifications, and I think one of the things that attracted both of us to him is, as she said, his service as a police officer, someone who has experienced the law enforcement system from the bottom up. And I don't think people will be pulling many fast ones on Judge Miller.

He succeeds Judge Ewing Werlein, who is just such an outstanding human being and a great judge, formerly of the law firm of Vinson and Elkins, as Senator Hutchison knows. And he is stepping down to take senior status, thus creating this vacancy.

Mr. Miller has, in addition to his distinguished legal career, done a lot in his community. He serves on the Board of Trustees of the Mental Health/Mental Retardation Authority of Harris County and the Texas Department of Mental Health and Mental Retardation Board, the Volunteer Lawyers Program. Senator Hutchison mentioned his specialty in admiralty law. I noticed missing from his resume, he was a member of the Texas Navy, but has just about every other kind of qualification you could hope for.

And so let me just say, Mr. Chairman, I would join Senator Hutchison in commending this outstanding nominee to our colleagues and hope that the confidence that the President has put in him and that Senator Hutchison and I have in him will be shared by our colleagues and he will be swiftly confirmed.

Senator SESSIONS. Thank you, Senator Cornyn.

Perhaps we could administer the oath for our nominees. If you would step forward and take your seats, we will do that. We will get the right names up there. The competent staff is right on the move.

If you would raise your right hands, and do you solemnly swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CHAGARES. I do.

Mr. MILLER. I do.

Mr. SEDGWICK. I do.

Ms. FREEMAN. I do.

Senator SESSIONS. Thank you. Have a seat.

Again, I will just restate, I believe this vote has started already. I don't think we will get very far starting now, and I will not try to do that. Unfortunately, it is three—it is probably going to be closer to 4:30 before we get back, unless for some reason somebody vitiates some of the votes and we do not actually have to do a roll call vote. Sometimes we can do a voice vote or something of that kind. So we will take care of that.

I think what I will do, since our nominees have been introduced, Mr. Miller and Mr. Chagares, I would—let's see here. I will introduce Mr. Sedgwick, he being nominated to be the Director of the Bureau of Justice Statistics at the Department of Justice. Over the years, during my 15 years in the Department of Justice, I always read those reports. I thought they were very valuable reports, and I think this is an incredibly important position that you are undertaking.

You are a political scientist with extensive experience and expertise relating to the American Government, the Constitution, and criminal justice. You have been a professor at the University of Massachusetts-Amherst since 1978. You received your A.B. degree from Kenyon College, magna cum laude (with honors) in political science in 1973, earning both your MAPA, Master's in Public Administration, and Ph.D. from the University of Virginia. In graduate school, nearly 60 percent of your work related to politics, while 40 percent related to economics. Your dissertation applied sociological and economic methodologies to law enforcement planning—important issues indeed. When you consider how many billions of dollars we spend in law enforcement, we ought to know a little bit more about what we are doing, I think.

After graduate school, Dr. Sedgwick spent nearly his entire career in academia, although in the 1980's he served 1 year as Deputy Director of the Justice Department's Bureau of Justice Statistics, so you are familiar with that office.

Dr. Sedgwick's research and teaching interests have included the study of democratization, democratic leadership, and the American Presidency. He has continued to develop expertise in the application of social science methods, including economics, to political science and public policy issues.

Our final nominee today is Sharee Freeman, nominated to be the Director of the Community Relations Service at the Department of Justice, a valuable institution that I have found on more than one occasion to help bring a good result out of tense circumstances. It has a role to play of importance.

Ms. Freeman received a B.A. from St. Lawrence University and a J.D. from Georgetown University Law Center. She began her legal career as a clerk to Judge Norma Holloway Johnson on the U.S. District Court for the District of Columbia. Beginning in 1982, Ms. Freeman served as an assistant district attorney with the Philadelphia District Attorney's Office—knowing that that would make Senator Specter happy, I am sure.

Following her service in Philadelphia, she served as Acting Assistant Solicitor and Attorney Advisor with the U.S. Department of Interior before leaving for Capitol Hill in 1997. Ms. Freeman's Capitol Hill service began as counsel to the House Judiciary Committee and Congressman Henry Hyde. She also served as counsel to Con-

gressman Hyde on the House International Relations Committee. Sometimes these issues are like dealing with foreign powers when you achieve harmony among different groups that come in contention.

In 2001, Ms. Freeman was appointed by President Bush and unanimously confirmed by the Senate to be the Director of CRS for a term of 4 years. Following the recent expiration of her 4-year term as Director, Ms. Freeman was named as Acting Director of CRS, where she continues to serve.

So I am glad we got to introduce each of you. Let's take our recess now. It will probably be 4:30 or somewhat after before we finish. I will return as quickly as I can. As Senator Cornyn indicated, count your blessings that it is not a contentious hearing, that we do not have a lot of things to say. Your records seem to have spoken for themselves. But there will be some questions that we will want to ask in this proceeding, and at the conclusion of it, then it will go to the full Committee for markup and vote at a different date.

So if there is no other business at this time, we will recess until approximately 4:30.

[Recess 3:21 p.m. to 3:46 p.m.]

Senator HATCH. [Presiding.] Mr. Chagares, you served for many years as U.S. Attorney in the District of New Jersey. You know, when people think about U.S. Attorneys, they think about prosecutors, but you spent most of your career handling civil cases, as I understand it. Is that correct?

STATEMENT OF MICHAEL A. CHAGARES, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Mr. CHAGARES. That is correct, Mr. Chairman.

Senator HATCH. Can you explain just what some of these civil cases were about?

Mr. CHAGARES. I will be happy to, Mr. Chairman. I should say, though—

Senator HATCH. You were chief of the Civil Division, right?

Mr. CHAGARES. I certainly was, but I did actually handle—I actually did work on various criminal matters, and actually now do criminal defense work.

Senator HATCH. I see.

Mr. CHAGARES. But I worked on all types of civil matters, largely what the U.S. Attorney's Office and Department of Justice calls affirmative cases, and that's where the United States is seeking relief—fraud cases, telemarketing fraud cases, endangered species cases, all different types of cases where the United States is the plaintiff.

Senator HATCH. I happen to think that is real good experience for you for this court, and I happen to think that is a great thing that you are doing. Of course, I belong to the Third Circuit Court of Appeals, and we appreciate that circuit.

[The biographical information of Mr. Chagares follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Michael Arthur Chagares

2. Address: List current place of residence and office address(es).

Residence: Wyckoff, New Jersey

Office: Court Plaza North
25 Main Street
Hackensack, New Jersey 07602

3. Date and place of birth.

I was born on May 1, 1962, in Pittsburgh, Pennsylvania.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I am married to the former Margaret L. Meade. She is an attorney-at-law, but is not now employed outside of our home. She is focusing upon raising our children.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

I attended Gettysburg College in Gettysburg, Pennsylvania from 1980 until 1984. I received a Bachelor of Arts degree from Gettysburg College in June 1984.

I attended Seton Hall School of Law in Newark, New Jersey from 1984 until 1987. I received a Juris Doctor degree (with honors) from Seton Hall Law School in June 1987.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Partner (Member) - Cole, Schotz, Meisel, Forman & Leonard, P.A.
(2004 - present)

Hearing Officer, 9/11 Victim Compensation Fund (2003 - 2004)

Adjunct Professor - Seton Hall School of Law (1991 - present)

Assistant U.S. Attorney, District of New Jersey (1990 - 2004)
Chief, Civil Division (1999 - 2004)
Director, Affirmative Civil Enforcement Unit (1996 - 1999)

Attorney - McCarter & English (1988 - 1990)

Law Clerk to Hon. Morton I. Greenberg, Judge, U.S. Court of Appeals for the Third Circuit (1987 - 1988)

Summer Law Clerk - Porzio, Bromberg & Newman (1986)

Law Clerk - Horowitz, Bross, Sinins & Imperial (1985)

Office Clerk, Chagares Agency (1984)

Trustee - Association of the Federal Bar of the State of New Jersey (2004 - present)

Editorial Board Member - New Jersey Lawyer Newspaper (1999 - present)

Director - The Historical Society of the U.S. District Court for the District of New Jersey (2000 - present)

Board of Trustees - West Bergen Mental Healthcare (1995 - 2004)
President (2001 - 2004)
Executive Vice President (1998 - 2001)

Wyckoff Public Library
President, Board of Trustees (2000 - 2002, 2005 - present)
Trustee (1998 - present)

Torpedoes Soccer Club
Vice President (2004 - present)

Trustee (2002 - present)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have had no military service.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Director's Award for Superior Performance as an Assistant U.S. Attorney (2002, 1998)

Commendations and awards from agencies such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Defense Criminal Investigative Service, the Department of Labor, Office of Labor Racketeering, the Department of Interior, Fish and Wildlife Service and the U.S. Army Corps of Engineers

"AV" Peer Review Rating in Martindale Hubbell Legal Directory

Named a "New Jersey Super Lawyer" by New Jersey Monthly Magazine and Law and Politics (2006)

Honors Graduate, Seton Hall Law School

Seton Hall Law Review (1985 - 1987)
Editorial Board (1986 - 1987)
Associate Editor (1986)

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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

New Jersey State Bar Association

Bergen County Bar Association

Association of the Federal Bar of the State of New Jersey (Trustee, 2004 - present)

The Historical Society of the U.S. District Court for the District of New Jersey (Director, 2000 - present)

Lawyers' Advisory Committee of the U.S. District Court, District of New Jersey

Federal Practice & Procedure Section of the New Jersey State Bar Association
(Chair, 1998 - 2000; Vice Chair, 1997 - 1998; Secretary, 1996 - 1997)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not involved in any organization that is active in lobbying before public bodies, with the possible exceptions of the American Bar Association and the New Jersey State Bar Association.

In addition to the organizations previously listed in this questionnaire, I belong to Grace United Methodist Church.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Bar of the State of New Jersey; admitted on December 18, 1987.

United States District Court for the District of New Jersey; admitted on December 18, 1987.

United States Court of Appeals for the Third Circuit; admitted on March 8, 1988.

None of my memberships have lapsed and I am in good standing with each of these courts.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Published Writings:

New Jersey Federal Civil Procedure [book, contributing author] (1999 & Supp. 2000, 2001, 2002, 2003, 2004, 2005/2006)

Lucrative Explosion in Qui Tam Suits, New Jersey Lawyer Newspaper, July 19, 1999, at 26-27

Summary Judgment Practice in Federal and State Court After Brill, 178 New Jersey Lawyer Magazine 31 (1996)

New Jersey Federal Civil Practice Handbook [book, contributing author] (1993 & Supp. 1994, 1995, 1996, 1997)

Determining the Validity of Waivers Under the Age Discrimination in Employment Act: The Third Circuit Approach and the Age Discrimination in Employment Waiver Protection Act, 19 Seton Hall Law Review 678 (1989)

Defining Damages for Breach of Contract [co-author], 129 New Jersey Lawyer Magazine 22 (1989)

Utilization of the Disclaimer as an Effective Means to Define the Employment Relationship, 17 Hofstra Law Review 365 (1989)

Parody of Piracy: The Protective Scope of the Fair Use Defense to Copyright Infringement Actions Regarding Parodies, 12 Columbia - VLA Journal of Law & the Arts 229 (1988)

Limiting the Employment-at-Will Rule: Enforcing Policy Manual Promises Through Unilateral Contract Analysis, 16 Seton Hall Law Review 465 (1986)

Toxic Torts, 16 Seton Hall Law Review 283 (1986)

As a member of the Editorial Board of the New Jersey Lawyer Newspaper, I drafted nine proposed editorials for consideration by the Board, according to my records. Each was approved by the Board and published, at times with minor edits. The titles of the proposed editorials were as follows:

Hurricane Katrina, Attorneys and the Justice System

Improving Access to Pro Bono Opportunities

In the Cause of Justice

The "Deck" is Stacked Against You

Attorney Civility

Spiffy for a Fee

Discrediting Rambo as an Attorney Role Model

Just a Reminder....

Chief Judge Anne Thompson

As a member of the Editorial Board of the Seton Hall Law Review, I was involved, in varying degrees, in editing virtually all of the material contained in volume seventeen of the Seton Hall Law Review. As an Associate Editor, I was involved in editing several pieces including a student note appearing at 16 Seton Hall Law Review 745 (1986).

The following is a list of programs, in chronological order, at which I was a speaker, moderator or both. In all cases my remarks were extemporaneous. I have no copies of text, notes, or outlines of these presentations.

Panelist, "1997 Federal Practice Update" (9/6/97)

Panelist, "Federal Appellate Practice Without Tears" (5/15/98, 6/18/98)

Panelist, "Employment Law in the Federal Courts" (12/11/98)

Moderator, Panelist, "Practice Before U.S. Magistrate Judges" (5/14/99, 10/14/99, 11/1/00, 10/1/02, 4/22/04, 11/16/05)

Moderator, Panelist, "Federal Civil Pro Bono Educational Program" (9/22/99, 9/20/00)

Panelist, "Healthcare Fraud & Abuse: Update 2000" (11/6/99)

Moderator, Panelist "Litigating Qui Tam Cases" (4/26/00)

Speaker, "Consumer Rights and Protection" (4/27/00, 5/3/00, 5/17/00, 6/19/03)

Panelist, "Handling Employment Cases Under Whistleblower Statutes & The Federal False Claims Act" (6/3/00)

Panelist, "Health Care Fraud Investigations" (12/9/00)

Speaker, The Historical Society of the U.S. District Court for the District of New Jersey, First Annual Gala (3/5/02)

Speaker, Ceremonial En Banc Session of Court of Appeals for the Third Circuit to Dedicate Portrait of Hon. Morton I. Greenberg, U.S.C.J. (5/30/02, reprinted in 326 Federal Reporter, 3rd Series)

Moderator, Panelist "Understanding the Federal False Claims Act" (10/27/04)

Moderator, U.S. District Court Judicial Conference, "Sealing Orders, Confidentiality and Public Access" (4/7/05)

Panelist, "Fear Not About Practicing in Federal Court (A Few Fundamental Lessons)" (5/20/05)

As an Assistant U.S. Attorney, I occasionally spoke publicly regarding specific cases at press conferences or in the context of an interview. I did not speak from a text in those instances.

Finally, I have lectured as an Adjunct Professor at Seton Hall Law School in the Appellate Advocacy and Civil Trial Practice courses given by the school. I have been an Adjunct Professor at Seton Hall Law School since 1991.

13. Health: What is the present state of your health? List the date of your last physical examination.

The state of my health is excellent. I had my last physical examination on September 28, 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never been a judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was appointed Law Clerk to the Honorable Morton I. Greenberg, Judge, United States Court of Appeals for the Third Circuit and served in that capacity from September 1987, until September 1988.

I was appointed an Assistant U.S. Attorney for the District of New Jersey in July 1990, and held that office until October 2004.

I was appointed to serve as a Hearing Officer for the 9/11 Victim Compensation Fund and served in that capacity from December 2003, until June 2004.

I have not run for any elective public office.

17. **Legal Career:**

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

1. **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 Law Clerk to the Hon. Morton I. Greenberg, Judge, United States Court of Appeals for the Third Circuit from September 1987, until September 1988.

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

I have never practiced law alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

10/88-6/90: Associate, McCarter & English, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, (973) 622-4444.

7/90-10/04: Assistant U.S. Attorney for the District of New Jersey, 970 Broad Street, Suite 700, Newark, New Jersey 07102, (973) 645-2700.

Director, Affirmative Civil Enforcement Unit (1996-1999)

Chief, Civil Division (1999-2004)

9/91-present: Adjunct Professor, Seton Hall University School of Law

10/04-present: Partner, Cole, Schotz, Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07602, (201) 489-3000

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was fortunate to begin my career as a law clerk to the Honorable Morton I. Greenberg, Judge, United States Court of Appeals for the Third Circuit. That appointment gave me the opportunity to become engrossed in the federal appellate process generally, and in the work of the United States Court of Appeals for the Third Circuit specifically.

A significant portion of my practice has been devoted to handling appeals and I have been counsel on over 100 cases before the Court of Appeals for the Third Circuit.

My interest in the appellate process extends beyond the courtroom and into the classroom. Indeed, I have taught many law students about the appellate process since 1991 in my capacity as an Adjunct Professor at Seton Hall Law School. I also have taught students trial advocacy since 1991.

I have handled an enormous variety of cases. Almost all of my cases, however, have been litigated in the federal courts. I have handled all aspects of cases including arguing appeals and conducting trials and other hearings.

As an Associate with McCarter & English, I handled various commercial and employment-related matters, and also worked on various appeals.

As an Assistant U.S. Attorney, I handled, for instance, cases involving Constitutional claims, discrimination claims and criminal charges. I also handled fraud cases, regulatory cases, civil rights cases, civil RICO cases and other cases wherein the United States sought relief.

In my capacity as Chief of the Civil Division of the U.S. Attorney's Office for the District of New Jersey, I directly supervised twenty-two Assistant U.S. Attorneys and kept a significant caseload. My responsibilities as Chief of the Civil

Division included approving appellate briefs prior to filing, approving positions to be taken in the trial courts and on appeal, assigning cases and approving settlements.

As a Partner in Cole, Schotz, Meisel, Forman & Leonard, I handle cases almost exclusively in the federal trial and appellate courts. My cases have involved, for instance, trademark law, Constitutional issues and civil rights law. I also handle a variety of criminal matters for my clients. As a result of my appellate experience, I am brought into cases on appeal before United States Courts of Appeals.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my time in private practice, my clients have been varied. They have included large companies, small companies and individuals. As an Assistant U.S. Attorney, my clients were the United States, its agencies and officials.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an Assistant U.S. Attorney (1990-2004), I appeared in court frequently, and at times, on a daily basis. As a Partner with my law firm (2004-present), I appear in court several times per month.

2. What percentage of these appearances was in:
(a) federal courts: 95%
(b) state courts of record: 5%
(c) other courts.

3. What percentage of your litigation was:
(a) civil: 85%
(b) criminal: 15%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than

settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As sole counsel, I have tried at least five cases to verdict or judgment. I have been associate counsel on at least two other trials.

5. What percentage of these trials was:
(a) jury: 20%
(b) non-jury: 80%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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. Hotel Employees and Restaurant Employees International Union**, U.S. District Court for the District of New Jersey, Case No. 95-4596 (Hon. Garrett E. Brown, Jr.). Case citations: 974 F.Supp. 411 (D.N.J. 1997) and 932 F.Supp. 636 (D.N.J. 1996).

In September 1995, the United States filed a civil RICO lawsuit against the 350,000 member Hotel Employees and Restaurant Employees International Union ("HEREIU") and its General Executive Board which alleged, among other things, that "[f]or over 25 years, various members and associates of organized crime groups have exercised influence over the HEREIU and [its] various constituent entities." The complaint also alleged that the General Executive Board of the HEREIU conspired with members and

associates of organized crime to conduct and participate in the affairs of the HEREIU through a pattern of racketeering activity consisting of extortion of members' rights, theft of union finds, and solicitation and acceptance of bribes from employers. In fact, the HEREIU was one of the "big four" unions identified by the President's Commission on Organized Crime in 1985 as being substantially influenced or controlled by organized crime.

Simultaneous to the filing of the lawsuit, a Consent Decree was executed by Judge Brown. Pursuant to the Consent Decree negotiated by members of the Department of Justice, Criminal Division, Organized Crime and Racketeering Section and I, a Monitor was appointed with the broad powers, including the power to remove or otherwise discipline HEREIU officials or members who, among other things, associated with members or associates of any organized crime group. This unique mechanism permitted an expeditious and efficient means for eliminating the influence of organized crime and corruption from the HEREIU.

Entry of the Consent Decree was just the start of a remedial process that required many matters to be investigated and to be litigated before the district court. After negotiations on the Consent Decree ended, I became sole counsel for the United States and as such, I supervised the continuing investigation and handled all litigated matters thereafter.

Insofar as this case was national in scope, the continuing investigation to extinguish organized crime and corruption within the HEREIU and its 157 local unions meant directing investigations in many cities across the country. I met with cooperating witnesses and marshaled evidence of wrongdoing for several years in this case.

On behalf of the United States, I litigated many matters in this case ranging from challenges to the constitutionality of the Consent Decree, to the court's authority under the All Writs Act, 28 U.S.C. § 1651, to extending the Consent Decree based upon the court's finding that there was probable cause to believe corruption or the influence of organized crime continued to exist in the HEREIU or its constituent entities.

The successes in this case were many. For instance, over thirty (30) HEREIU officials (including the HEREIU General President, Edward T. Hanley), members and associates were permanently barred from the union or otherwise disciplined. In addition, corruption and the influence of organized crime was purged from the HEREIU.

On behalf of the United States, I negotiated and executed a Final

Order of Dismissal of this case that was approved by the district court. That Order permanently enjoined all officers, employees and members of the HEREIU and its constituent entities from, among other things, associating with members or associates of any criminal group and permitting such persons "to exercise any control or influence, directly or indirectly in any way or degree, in the conduct or affairs of the HEREIU and its constituent entities." Further, the Order mandates that an independent Public Review Board with the power to expel members for violating, among other things, the permanent injunctive relief discussed above, be maintained indefinitely.

I was presented a Director's Award for Superior Performance as an Assistant United States Attorney by then-Attorney General Reno in 1998 as a result of my handling of this case.

Defendant HEREIU was represented by:

Robert J. Rotatori, Esq.
Rotatori, Bender, Gragel, Stoper & Alexander Co., L.P.A.
800 Leader Building
526 Superior Avenue East
Cleveland, Ohio 44114
(216) 928-1010

2. **Staiano v. File Aid of New Jersey, et al.**, U.S. Bankruptcy Court for the District of New Jersey, Adversary Proceeding No. 98-02257 (Hon. Novalyn L. Winfield, U.S.B.J.). Case citation: 233 B.R. 315 (Bankr. D.N.J. 1999).

This case involved a fraud scheme that victimized as many as 1000 or more people living in New Jersey's more urban areas who could ill afford to be deceived.

Through a variety of fraudulent, unfair, and deceptive advertisements and representations including guarantees of avoiding eviction and erasing all of their debt balances, the defendants lured people facing eviction from their apartments or who were suffering from other financial difficulties into paying them to prepare bankruptcy petitions for filing. The victims of this scheme generally had low incomes and had little or no knowledge about bankruptcy law or procedure.

Victims were largely solicited after the defendants received from the Superior Court of New Jersey the names and addresses of persons against whom eviction actions had been filed. The solicitations contained language including, "Notice has been

served upon you by:" followed in large, bold letters "THE SUPERIOR COURT OF NEW JERSEY." The solicitations also contained language notifying the recipient that he or she might be evicted soon and that the defendants might be able to help the recipient. This solicitation wrongly led the recipient to believe that the sender was connected to the court system or was a state agency offering assistance to persons in difficult financial circumstances. Solicitations also advised the recipients they could provide the recipients "WITH LEGAL OPTIONS YOU MAY NOT BE AWARE OF." None of the defendants, however, was an attorney. Further, the solicitations represented that with defendants' assistance, the recipient could stay in his or her "apartment or home for up to 6 months or longer" and that they could erase all of the recipient's debts. These guarantees had no legal basis and were misleading and deceptive.

After creating the false impression that they were qualified to give legal advice, the defendants would advise victims that filing bankruptcy was the solution to their problems, regardless of whether bankruptcy was an appropriate solution or not. If the victims could pay a $300 fee, the defendants would file a bankruptcy petition on behalf of the victim, but almost always without the necessary schedules and other documents necessary to continue their cases. The defendants were unavailable to assist their "clients" after the petitions were filed and, ultimately, the petitions would be dismissed.

On April 22, 1998, I filed this lawsuit on behalf of the bankruptcy trustee and was successful in obtaining a temporary restraining order effectively halting defendants' scheme. In May 1998, I handled a preliminary injunction hearing at which I examined witnesses, including several of defendants' customers, and presented other evidence to the court. The court granted plaintiff's application and issued a preliminary injunction which continued to halt defendants' scheme. Several of the defendants thereafter entered into consent decrees ending the cases against them and one defendant began to cooperate with the government.

In January 1999, I handled the trial of this case. Following the trial, the court permanently barred defendants from their scheme, ordered that all of the money collected by the defendants be disgorged and ordered that the defendants be fined the maximum amount provided by the applicable statute. Hence, the court granted all of the relief sought by the plaintiff. The opinion was published at 233 B.R. 315 (Bankr. D.N.J. 1999). Subsequently, my office returned monies to people who were victims of this scheme.

I handled the trial and every other aspect of this case by myself and I directed the investigation of the case.

Defendants were represented by:

Robert M. Vreeland, Esq.
The Rinaldo Suite
2444 Morris Avenue
Union, New Jersey 07083
(908) 687-8910

Michael P. Hrycak, Esq.
231 Elmer Street
Westfield, New Jersey 07090
(908) 789-1870

3. **United States v. International Boxing Federation, et al.**, U.S. District Court for the District of New Jersey, Case No. 99-5442 (Hon. John W. Bissell, U.S.D.J.).

The International Boxing Federation (the "IBF") is one of the three major professional-boxing sanctioning organizations in the world, and the only such organization located within the United States. The IBF's primary functions are to rate boxers in each of the seventeen weight divisions and to sanction bouts. The significance of a boxer's rating to his career trajectory cannot be overstated. A boxer's rating determines his career opportunities, including whom he will fight, how much money he will earn, and whether he will ever have an opportunity to fight for a title.

I was part of a team of criminal and civil Assistant U.S. Attorneys who directed an investigation of corruption by IBF officials.

Civilly, I was involved in drafting and filing a civil RICO complaint, an application for a temporary restraining order and preliminary injunction, eight certifications of personalities in the boxing profession and a lengthy brief in support of the United States' application.

I was part of the team that proved, in the civil injunction hearings, that Robert Lee, Sr., the President of the IBF, and other high-ranking IBF officials, had systematically corrupted the IBF's ratings by soliciting and accepting bribes from promoters and managers to fix ratings. The United States

presented evidence of dozens of bribes, spanning thirteen years. The United States further proved that ratings were fixed specifically to give certain boxers an opportunity to fight for a title. In the process, countless professional boxers, as well as the integrity of the sport itself, were victimized. Significantly, the IBF had ascended to the status of a major sanctioning organization by promoting itself as the honest, above-board alternative to other, corrupt sanctioning organizations, and had attracted prominent boxers under that guise.

Judge Bissell issued a preliminary injunction barring Lee and his son from the IBF, imposing a Monitor with broad powers and imposing strict financial controls over the IBF.

In addition, following a lengthy criminal trial, a jury convicted Robert Lee, Sr. for violations of 18 U.S.C. §§ 1952 and 1956, and 26 U.S.C. § 7206.

Following imposition of the preliminary injunction, I obtained from Robert Lee, Sr. and his son, Robert Lee Jr., consent orders permanently barring them from involvement or membership in any boxing organization or entity, and requiring Robert Lee, Sr. to relinquish and return to the IBF all financial interests and to pay $50,000 to the IBF.

As lead civil counsel in the case, I handled other matters in the course of the case. For instance, I opposed applications to modify or terminate the preliminary injunction issued by Judge Bissell. In addition, I negotiated the Consent Decree that was entered by Judge Bissell and permanently enjoined IBF leaders and members from soliciting or accepting money or anything of value that would affect the ranking of boxers or otherwise adversely affect the interests of the IBF. The Consent Decree also mandated enforcement of certain controls and the new IBF Code of Conduct. Finally, the Consent Decree required the IBF to form and maintain an "Independent Review Board" to investigate allegations of violations of the Consent Decree and IBF Code of Conduct and to assess discipline, including expulsion, when appropriate. The Consent Decree ended the IBF case.

In sum, this case resulted in the reformation of a historically corrupt but important sanctioning organization and a restoration of fairness and honesty to boxing ratings.

I received a Director's Award for Superior Performance as an Assistant United States Attorney in 2002 as a result of my

handling of this case.

The IBF was represented by:

Linda P. Torres, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, L.L.P.
Three Gateway Center
Newark, New Jersey 07102
(973) 622-7711

My co-counsel for the United States was:

Michael A. Hammer
Assistant U.S. Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) 645-2700

4. **United States v. Hanley, et al.**, U.S. District Court for the District of New Jersey, Case No. 90-5017 (Hon. Garrett E. Brown, Jr., U.S.D.J.) and U.S. Court of Appeals for the Third Circuit, Case Nos. 92-5719, 92-5720. Case citations: 1992 WL 684356 (D.N.J. Dec. 3, 1992), aff'd, 6 F.3d 780 (3d Cir. 1993).

In December 1990, the United States filed a landmark civil RICO action against officials of Atlantic City-based Hotel Employees and Restaurant Employees International Union ("HEREIU") Local 54, individuals associated with the Bruno/Scarfo organized crime family, the union and its affiliated benefit plan, and the HEREIU General President, Edward T. Hanley. The Government charged that for 20 years prior to the suit, the Philadelphia-based Bruno/Scarfo crime family used violence and intimidation and acts of extortion, embezzlement and bribery to control the 22,000 member Local 54 and to strip the members of their rights as union members. The Government sought to eliminate organized crime's stranglehold of Local 54 and return the union to its members.

In April 1991, a team of government attorneys, including then-U.S. Attorney Michael Chertoff and I, negotiated and entered into a Consent Decree with the defendants, which provided for a Court-appointed Monitor to oversee the affairs of Local 54, to ensure that Local 54 would be free of the influence of organized crime and to restore "the independence, democratic functioning, and integrity of the union...." In addition, the President, Vice President and Secretary-Treasurer of Local 54, as well as other Local 54 officials, agreed to leave their positions.

Entry of the Consent Decree was just the start of a remedial process that required many matters to be investigated and to be litigated both before the district court and the court of appeals. Subsequent to entry of the Consent Decree, I became sole counsel for the United States and as such, I supervised the continuing investigation and handled all litigated matters thereafter.

Matters litigated included a challenge to Local 54's first contested election in over twenty years by two candidates who were barred by the Court-appointed Monitor from running for office. An investigation revealed that one of the candidates was the candidate sponsored by the Bruno/Scarfo crime family and the other had highly questionable associations and was an officer of another mob-dominated local union.

I handled the matter on behalf of the United States. In considering all of the arguments and evidence provided by the parties, the district court upheld the barring of the candidates. See 1992 WL 684356 (D.N.J. Dec. 3, 1992). I also handled the petition to stay the election in the district court, pending an appeal. That petition was denied by the district court.

The two barred candidates then appealed the district court decision and petitioned the court of appeals for a stay of the election. I wrote and submitted a brief on behalf of the United States in opposition to the stay petition and the court of appeals denied the petition.

The appeal involved novel issues such as whether Fifth Amendment due process and First Amendment freedom of association claims could be raised by the appellants. I briefed the issues before the court of appeals and argued, among other things, that appellants' Constitutional claims should be rejected because the requisite "state action" was lacking. Alternatively, I argued that these claims failed on the merits.

After considering the arguments of the parties, the court of appeals affirmed the decision of the district court. See 6 F.3d 780 (3d Cir. 1993)(table).

On behalf of the United States, I successfully moved for a permanent injunction and dismissal of the case in early 1997. The permanent injunction entered by the district court prohibits all officers, employees and members from, among other things, associating with members or associates of any criminal group and permitting such persons "to exercise any control or influence,

directly or indirectly, in any way or degree, in the conduct or affairs of Local 54 or the Local 54 Severance Fund." Further, the injunction directs that all Local 54 officials have "an affirmative and continuing obligation to be vigilant with respect to preventing and otherwise detecting and remedying the types of derelictions, abuses and corrupt practices identified in the Complaint...."

Local 54 was represented by:

Robert F. O'Brien, Esq.
O'Brien, Belland, & Bushinski, L.L.C.
2111 New Road
Northfield, New Jersey 08225
(609) 677-7930

Alfred C. DeCotiis, Esq.
DeCotiis, FitzPatrick, Cole & Wisler, L.L.P.
500 Frank W. Burr Blvd.
Teaneck, New Jersey 07666
(201) 928-1100

Edward T. Hanley was represented by:

Robert J. Rotatori, Esq.
Rotatori, Bender, Gragel, Stoper & Alexander Co., L.P.A.
800 Leader Building
526 Superior Avenue East
Cleveland, Ohio 44114
(216) 928-1010

5. **Price v. Runyon, et al.**, U.S. District Court for the District of New Jersey, Case No. 94-5120 (Hon. Clarkson S. Fisher, U.S.D.J.). Case citation: 951 F.Supp. 52 (D.N.J. 1996).

This was an action brought under Title VII the Civil Rights Act of 1964 by a United States Postal Service employee against the Postal Service and her supervisor. This case was significant in that it was one of the first Title VII cases to be tried to a jury and that it involved allegations of wrongdoing by a Postmaster.

Plaintiff had been terminated for taking bulk mail she was supposed to sort and, rather than sorting it, re-rerouted it and treated it as outgoing mail, only to have the same mail return days later. Plaintiff alleged causes of action including sexual

harassment and retaliation. More specifically, plaintiff alleged that she was the victim of discrimination following the dissolution of a consensual relationship with her supervisor, who was the Postmaster of a Postal Service facility.

This case was tried to Judge Fisher and a jury for roughly three weeks in May 1996. Following deliberations, the jury returned a verdict of no cause of action. In particular, the jury found that plaintiff's supervisor's actions were not unwelcome and that the officials responsible for her termination were not even aware that she had engaged in the equal employment opportunity process previously, thus making retaliation impossible.

Following the jury's verdict, plaintiffs moved for judgment as a matter of law or for a new trial. After briefing by the parties, Judge Fisher denied plaintiff's motion in a decision reported at 951 F.Supp. 52 (D.N.J. 1996).

I handled all aspects of the trial in this case, although I may have permitted a Postal Service attorney assigned to the case to handle a small part of the case, such as examining a witness or two. I am unable to recall the name of the Postal Service attorney. I also handled all of the briefing and motion practice in the case.

Plaintiff was represented by:

Lewis B. Cohn, Esq.
Witman, Stadtmauer & Michaels, PA
26 Columbia Turnpike
Florham Park, New Jersey 07932
(973) 822-0220

Defendant Curry was represented by:

Raymond D. Bogan, Esq.
Bogan & Bogan
526 Bay Avenue
Point Pleasant Beach, New Jersey 08742
(732) 899-9500

6. **Grabowski, et al. v. Bonner, et al.**, U.S. District Court for the District of New Jersey, Case No. 94-2363 (Hon. Nicholas H. Politan, U.S.D.J.) and U.S. Court of Appeals for the Third Circuit, Case Nos. 95-5532 and 98-6057. Case citation: 107 F.3d 7 (3d Cir. 1997)(table).

This case followed an internal Drug Enforcement Administration ("DEA") investigation regarding allegations of misconduct by DEA Special Agents assigned to "Group 33" in New York City. The investigation was initiated following allegations by confidential informants of the DEA regarding financial improprieties, including extortion of awards payable to confidential informants, as well as corruption, brutality and other misconduct by members of Group 33. The investigation was covered by the press and was used by several convicted defendants -- with some success -- attempting to use the information to obtain a new trial. See, e.g., United States v. Bravo, 808 F.Supp. 311 (S.D.N.Y. 1992).

Following the investigation, the DEA's Board of Professional Conduct (the "Board") concluded that there was a pattern of violations of DEA rules and regulations by certain members of Group 33 over a period of years. As a result, the Board proposed disciplinary actions against certain members of Group 33. One such member contested the discipline assessed against him and prevailed before the Merit Systems Protection Board. Other members were suspended for under fourteen days and one member was demoted.

The plaintiffs, who were nine members of Group 33, filed this lawsuit against the DEA and fifteen DEA officials and others they believed responsible for the investigation and disciplinary proceedings regarding Group 33. Plaintiffs claimed they were wrongfully treated by the defendants and sought over $20 million in damages.

This case presented novel issues regarding the right of federal employees to sue their employer and their supervisors. I represented the defendants.

The plaintiffs asserted multiple bases for liability including violations of the Constitution, the Back Pay Act, the Privacy Act, the Equal Access to Justice Act and the RICO statute and asserted various common law tort claims.

I wrote an extensive brief and filed a motion to dismiss the complaint. The main argument supporting defendants' motion was that the Civil Service Reform Act preempted the lawsuit and provided the plaintiffs their sole avenue of recourse for the actions of which they complained. The district court required several rounds of briefing and held lengthy oral argument on defendants' motion. Finally, the district court granted defendants' motion to dismiss the complaint.

Plaintiffs appealed the district court decision to the

U.S. Court of Appeals for the Third Circuit and the appeal was docketed as case number 95-5532. I wrote and submitted an appellate brief and a motion to the court of appeals. On September 30, 1996, I argued this case to the court of appeals.

The court of appeals affirmed the district court opinion, except that it vacated and remanded the issue of whether plaintiffs' civil RICO claims were precluded by the Civil Service Reform Act. See 107 F.3d 7 (3d Cir. 1997)(table). The court of appeals, in particular, sought an analysis by the district court of the whether the Civil Service Reform Act would preclude another statutory remedy, as opposed to a judicially-created remedy.

I wrote and submitted briefs in support of defendants' renewed motion to dismiss, focusing upon the issue of statutory construction framed by the court of appeals. Following oral argument, the district court granted defendants' motion to dismiss on April 8, 1998.

Plaintiffs appealed Judge Politan's order dismissing the case and that appeal was docketed as case number 98-6057. However, plaintiff/appellants did not pursue this, their second appeal, and the Clerk of the U.S. Court of Appeals for the Third Circuit granted their application to dismiss the appeal on October 14, 1998.

I alone handled every aspect of this case, including briefing and arguments, before the district court and court of appeals.

Plaintiff/appellants were represented by:

Thomas G. Roth
395 Pleasant Valley Way
Suite 201
West Orange, New Jersey 07052
(973) 736-9090

7. **United States v. Local 560, et al.**, U.S. District Court for the District of New Jersey, Case No. 82-689 (Hon. Harold A. Ackerman, U.S.D.J.) and U.S. Court of Appeals for the Third Circuit, Case Nos. 91-5440, 91-5441. Case citation: 974 F.2d 315 (3d Cir. 1992).

This case was instituted in 1982 and, at the time, was an unprecedented action under the civil provisions of the RICO statute against International Brotherhood of Teamsters Local 560, its Executive Board and several former officers of Local 560.

After a five-month trial in 1984, Judge Ackerman permanently barred two Local 560 officials who had previously been convicted of related predicate racketeering acts, issued an injunction temporarily removing the entire Local 560 Executive Board and imposed in its stead a judicially supervised trusteeship. A main purpose of the lawsuit was to rid Local 560 of the influence of the Genovese Crime Family.

In 1988, the United States sought additional relief with respect to one of the temporarily removed Executive Board members, Michael Sciarra. With a union election upcoming, the United States successfully persuaded the district court that Mr. Sciarra should be barred from seeking elective union office. Among the court's findings were that the Genovese Crime Family intended to maintain its control over Local 560, and that Michael Sciarra was their representative. In fact, the court held that if he were elected to office it was "highly likely that the Genovese Family, through [him], would regain control over Local 560." 694 F.Supp. 1158, 1191 (D.N.J.), aff'd, 865 F.2d 253 (3d Cir. 1988), cert. denied, 489 U.S. 1068 (1989). Nonetheless, following the election, Sciarra was named by the newly elected Executive Board to the position of business agent.

In 1990, the United States sought and received additional injunctive relief, preliminarily barring Sciarra from a position as a business agent or any other position of trust within Local 560. This application was supported by evidence that Sciarra, even as a business agent, continued to control and dominate the local union.

Later in 1990, a trial on the permanent injunction was held and the United States proved Sciarra's then-current contacts with the Genovese Crime Family. The permanent injunction prohibited Sciarra from influencing the affairs of Local 560, restricting his appearance at the Local 560 union hall and barring him from attending Local 560 functions. The district court found, regarding the breadth of the injunction, that the provisions contained therein were essential to achieve the purpose of the injunction.

I became involved in this case when Sciarra and Local 560 appealed the district court's issuance of the permanent injunctive relief against Sciarra. The appeal, among other things, involved issues regarding the First Amendment, the Labor-Management Reporting and Disclosure Act (the "LMRDA") and the scope of injunctions under RICO. I briefed each of these issues extensively.

I argued this case to the United States Court of Appeals for the Third Circuit on February 10, 1992, along with another Assistant U.S. Attorney. In particular, I argued that the compelling governmental interest in eradicating crime from Local 560 justified an abridgement of the First Amendment associational rights of the Local 560 members and that the injunction was sufficiently narrowly tailored so as not to violate the members' First Amendment rights. I also argued that the government's compelling interest justified an abridgement of the members' rights under the LMRDA. Finally, I argued that the injunction was validly issued under RICO and was both reasonable and necessary under the circumstances existing within Local 560.

On August 18, 1992, the court of appeals issued a detailed published opinion affirming the injunction against Sciarra. See 974 F.2d 315 (3d Cir. 1992).

Simultaneously, in 1991 and early in 1992, I was one of the three attorneys representing the United States in a seven day hearing before the district court to determine whether the trusteeship of Local 560 should be continued or modified. Thereafter, I was involved in negotiating an Interim Settlement Agreement and Consent Decree with the defendants entered by the court in February 1992. Finally, as Chief of the Civil Division of the U.S. Attorney's Office, I approved the Consent Decree that ended the seventeen year-long Local 560 case.

Appellant Local 560 was represented in the court of appeals by:

Samuel J. Buffone, Esq.
Ropes & Gray LLP
One Metro Center
700 12th Street, N.W.
Washington, D.C. 20005-3948
(202) 508-4600

Appellant Sciarra was represented in the court of appeals by:

Peter V. Ryan, Esq.
(current address and telephone number unknown)

My co-counsel for the United States were:

Colette R. Buchanan
Assistant U.S. Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) 645-2700

Robert C. Stewart, Esq.
Stewart Consulting
220 St. Paul Street
Westfield, New Jersey 07090
(908) 928-1100

8. **Oyebanji v. Gonzales**, U.S. Court of Appeals for the Third Circuit, Case No. 03-4143. Case citation: 418 F.3d 260 (3d Cir. 2005).

This appeal focused upon the issue of which crimes constitute a "crime of violence" pursuant to 18 U.S.C. § 16(b). The appellant in this case killed a woman while driving drunk and was convicted under New Jersey's vehicular homicide statute. Insofar as appellant was a lawful permanent resident, he was subject to removal from the United States if his offense "by its nature, involves a substantial risk that physical force against the person of property of another may be used in the course of committing the offense." Id. Appellant argued that "use" as employed in section 16(b) should be read to mean "intentionally use," thus imposing a scienter requirement in section 16(b).

I represented the appellee and argued that the plain language of section 16(b) does not contain a specific intent or scienter requirement and urged the court of appeals to reject appellant's invitation to add words to the statute when applying it. In addition, I cited over sixty examples of statutes explicitly including words such as "intentionally" or "knowingly" when using the words "use" or "used." I argued that those statues stood as strong proof that Congress knows well how to include a scienter requirement when employing the words use or used and its decision not to include words such as intentionally and knowingly in section 16(b) clearly evidenced its intent that the word "used" in section 16(b) does not include a scienter requirement.

I argued this matter before the U.S. Court of Appeals for the Third Circuit on June 18, 2004.

Subsequent to oral argument, the United States Supreme Court decided Leocal v. Ashcroft, 125 S.Ct. 377 (2004). Following the "considered dicta" of the Leocal Court, the court of appeals reversed the decision of the district court. 418 F.3d 260, 265 (3d Cir. 2005).

I researched and wrote appellee's brief by myself and I argued the case before the court of appeals.

The appellant was represented by:

Richard Coughlin
Federal Public Defender
800 Cooper Street, Suite 350
Camden, New Jersey 08102
(856) 757-5341

9. **United States, et al. v. Bierman, et al.**, U.S. District Court for the District of New Jersey, Case No. 99-2378 (Hon. Dickinson R. Debevoise, U.S.D.J.).

I successfully represented the government in this case seeking injunctive and other relief to stop a scheme that defrauded thousands of consumers through false and misleading direct mail sweepstakes promotions.

Defendants, employing various business names, sent consumers personalized "notifications" and other documents that represented the consumer was eligible for a large cash sweepstakes award which could not be released until an attached claim form -- requiring payment of a "transferal fee," "release fee" or other fee of approximately $15.00 -- was completed and returned. These notifications appeared to be official in character and many of them purported to be from or endorsed by award examiners and sweepstakes administrators. However, no award monies were ever paid by defendants.

At the time the complaint was filed, defendants were receiving approximately 3,000 responses per day and it was estimated that the defendants were receiving approximately $22,500.00 per day from unsuspecting consumers.

I represented the government throughout the investigation and civil prosecution of this case.

In an effort to stop the victimization of innocent consumers immediately, I sought (on behalf of the government) and was granted a temporary restraining order stopping defendants' mail responsive to defendants' solicitations. This order effectively halted defendants' scheme. Further, the court granted the government's application to seize two of defendants' bank accounts. Finally, the court granted the government's request for an order compelling expedited discovery from the defendants.

Judge Debevoise held a hearing on the government's application

for a preliminary injunction in August 1999. One issue dealt with at the hearing was the government's rebuttal of defendants' statement "[n]o reasonable consumer would think he had already won the prize," with letters retrieved from defendants' trash the day the case was filed, from consumers who believed they had won the cash prize.

Following the hearing, Judge Debevoise issued a preliminary injunction that continued stoppage of defendants' mail responsive to defendants' solicitations.

The defendants and the government later entered into a consent decree approved by Judge Debevoise permanently barring defendants from engaging in similar schemes, directing the Postal Service to return all letters from consumers in response to defendants' solicitations and appointing the Better Business Bureau to distribute refunds to victimized consumers.

The defendants were represented by:

Donald P. Jacobs
Budd Larner, P.C.
150 John F. Kennedy Parkway
Short Hills, NJ 07078-0999
(973) 315-4413

10. **Gamble v. Brown**, U.S. District Court for the District of New Jersey, Case No. 93-2962 (Hon. Alfred J. Lechner, U.S.D.J.) and U.S. Court of Appeals for the Third Circuit, Case No. 94-5100. Case citation: 40 F.3d 1239 (3d Cir. 1994)(table).

This was a matter wherein I represented the defendant/appellee Secretary of the Department of Veterans Affairs both at trial and before the court of appeals.

Plaintiff was a nurse at the Veterans Affairs facility in Lyons, New Jersey. One evening, while plaintiff was the designated supervisory official in the acute psychiatric ward, a patient on suicide status was apparently abused by hospital staff and suffered injuries. Plaintiff was terminated by the Department of Veterans Affairs (the "V.A.") for, among other things, abdicating her responsibilities, failing to chart the events properly, and failing to examine the patient after the events.

Plaintiff, a caucasian woman, sued the V.A. claiming she was the victim of race discrimination. At the outset of the case, defendant moved to dismiss plaintiff's case on the basis that it

was time-barred. Judge Lechner granted defendant's motion. Plaintiff's counsel appealed the dismissal to the U.S. Court of Appeals for the Third Circuit. I prepared and submitted briefs on behalf of the defendant/appellee. The court of appeals found that the statute of limitations was equitably tolled and, as a result, vacated the district court decision and remanded the case for further proceedings. See 40 F.3d 1239 (3d Cir. 1994)(table).

Following discovery, the case was tried before Judge Lechner in January 1998. Judgment was entered in favor of the defendant.

I handled every aspect of this case by myself before the district court and the court of appeals.

The plaintiff/appellant was represented by:

Mitchell Kastner
95 Smith Road, Box 5967
Somerset, New Jersey 08875
(732) 873-9555

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have handled an enormous variety of cases and matters, and many of these cases and matters were not tried or were not litigated extensively. For instance, I have handled cases to halt various fraud schemes and to protect the public from adulterated and misbranded drugs, devices and food. I have also handled cases employing the False Claims Act and other causes of action to recover millions of dollars for the United States. Such matters included health care fraud and procurement fraud matters.

I have handled matters involving the environment and natural resources, including matters under the Clean Water Act and the Endangered Species Act. I have also handled cases employing statutes as diverse as the Communications Act of 1934, the federal equity skimming statute, the Lanham Act, the Federal Meat Inspection Act, the Comprehensive Drug

Abuse Prevention and Control Act and the Displaced Persons Act of 1948.

I have been active in protecting the civil rights of individuals. For instance, I was appointed the New Jersey District Election Official for the Department of Justice in 2002 and served in that position until my departure from the U.S. Attorney's Office in 2004. In this capacity, and through my work (with other attorneys) in cases brought under the Voting Rights Act, I have worked to protect voting rights. I led the federal effort to monitor the controversial 2002 Newark, New Jersey election to ensure the voting rights of the citizens of that city. I have also worked with other attorneys to bring cases seeking relief under the Fair Housing Act and am currently co-lead plaintiff's counsel in a case alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Constitution.

My involvement in the law is not limited to handling my own cases. I am very involved in advancing the legal profession through education. For instance, I have taught many students at Seton Hall School of Law since 1991. In addition, I have participated in at least twenty educational programs, many of which I organized and moderated. I have also made presentations to members of the public to advise them about fraud schemes.

Finally, I am involved in advancing the mission of the courts and the legal profession though my activity in various bar associations and court advisory groups. For instance, I have been active in developing proposed rules to implement electronic case filing and to develop court rules regarding sealing of documents and processing Social Security appeals. Further, I was involved in proposing protocols to the district court aimed to attract attorneys willing to handle pro bono assignments, to ensure fair distribution of such assignments and to ensure attorneys accepting pro bono assignments could be reimbursed for their expenses.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I participated in the Federal Employee Retirement System (FERS) and contributed to the Thrift Savings Plan during my employment with the U.S. Attorney's Office.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I do recognize that there may be litigation or financial arrangements related to my law practice or to my tenure at the U.S. Attorney's Office that may present a potential conflict-of-interest during my initial service as a judge, if I confirmed by the United States Senate. Again, if such a potential conflict-of-interest does arise, I will strictly adhere to the Code of Conduct for United States Judges as well as applicable statues, regulations and policies governing the federal judiciary.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No, I have no such plans, commitments, or agreements.

   I do have an interest in continuing to teach at a local law school. I will follow all rules and regulations regarding both obtaining permission to teach and accepting compensation for teaching.

4. 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, patents, 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.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1 Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Chagares, Michael A	Third Circuit	1/25/2006
4 Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
Circuit Judge-Nominee	(•) Nomination. Date 1/25/2006 ( ) Initial ( ) Annual ( ) Final	1/1/2005 to 12/31/2005
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Cole, Schotz, et al. 25 Main Street Hackensack, NJ 07602	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner (Member)	Cole, Schotz, Meisel, Forman & Leonard
2.	Adjunct Professor	Seton Hall University School of Law
3.	Trustee	Association of the Federal Bar of the State of New Jersey
4.	Editorial Board Member	New Jersey Lawyer Newspaper
5.	Director	The Historical Society of the U.S. District Court for the District of New Jersey
6.	Trustee (& President)	Wyckoff Public Library
7.	Trustee (& President)	West Bergen Mental Healthcare (until 6/2004)
8.	Trustee (&Vice President)	Torpedoes Soccer Club

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

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Chagares, Michael A	1/25/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2006	Cole , Schotz, Meisel, Forman & Leonard, P.A.	$10,000
2.	2005	Cole, Schotz, Meisel, Forman & Leonard, P.A.	$230,252.16
3.	2005	Seton Hall University School of Law	$2,000
4.	2004	Cole, Schotz, Meisel, Forman & Leonard, P.A.	$51,832.48
5.	2004	Seton Hall University School of Law	$2,000

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Chagares, Michael A	1/25/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		Exempt	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
Chagares, Michael A	1/25/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e g div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Fidelity Cash Reserves	A	Dividend	K	T	Exempt				
2. Commerce Bank (checking acct.)	A	Interest	K	T					
3. Dreyfus Money Market	A	Dividend	K	T					
4. Fidelity IRA		None	J	T					
5. Fidelity Cash Reserves	A	Dividend	K	T					
6. Washington Mutual (escrow Acct.)	A	Interest	J	T					
7. Exxon Mobil Stock	A	Dividend	K	T					
8. Thrift Savings	C	Dividend	M	T					
9 William Penn Life Ins	A	Interest	J	T					
10. American General Life Ins.	A	Interest	J	T					
11. Smith Barney (brokerage acct)	A	Interest	K	T					
12.									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Chagares, Michael A	1/25/2006

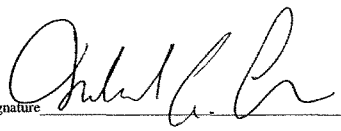
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Chagares, Michael A	1/25/2006

IX. CERTIFICATION.

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

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

Signature  Date 1/25/06

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		32	448	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		19	337	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		186	893
Real estate owned-add schedule		780	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		61	975				
Cash value-life insurance		14	141				
Other assets itemize:							
TSP Contributions		98	574				
Fidelity Cash Reserves Acct.		37	213				
Dreyfus Money Market Acct.		38	574	Total liabilities		186	893
3 Other Assets – see schedule		31	278	Net Worth		926	647
Total Assets	1	113	540	Total liabilities and net worth	1	113	540
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Exxon Mobil	$ 19,337
Real Estate Owned	
Personal residence	$ 780,000
Additional Assets Listed	
Fidelity IRA	$ 10, 573
Smith Barney (brokerage acct.)	16, 216
Escrow Balance on Mortgage	4,489
Total Additional Assets	$ 31,278
Real Estate Mortgages Payable	
Personal residence	$ 186,893

III. GENERAL (PUBLIC)

1. 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 been very concerned about the provision of legal representation to the disadvantaged. Early in my career as a young associate attorney, I represented several pro bono clients in various matters. I was barred by regulation, however, from taking on pro bono representations while I was at the U.S. Attorney's Office for the District of New Jersey. Nonetheless, I was very involved in promoting the concept of pro bono representation.

For instance, with the endorsement of the U.S. District Court, I planned and acted as a moderator/speaker for a seminar titled: "Federal Civil Pro Bono Educational Program." The purpose of the program was to encourage attorneys to undertake pro bono assignments and to educate them regarding several substantive areas where pro bono assignments are common. I enlisted expert attorneys in the areas of civil rights litigation, immigration and social security appeals to speak at the program. I also gathered a notebook of helpful materials and forms for the attendees. I planned and spoke at a later, similarly named seminar as well.

I have served as the Chair of the U.S. District Court Lawyers' Advisory Committee's subcommittee on the court's pro bono program (the "pro bono subcommittee"). The pro bono subcommittee studied issues relating to pro bono assignments by the court and made specific recommendations designed to attract attorneys willing to handle pro bono matters and to ensure a fair distribution of such assignments. These recommendations were adopted by the court.

I also served as the Chair of the U.S. District Court Lawyers' Advisory Committee's subcommittee on reimbursement of pro bono attorneys. This subcommittee studied ways to reimburse attorneys taking on pro bono assignments for their expenses (such as for expert witness fees). The inability to so reimburse

attorneys, unfortunately, acts as a disincentive to attorneys who might otherwise accept such assignments. The subcommittee concluded, among other things, that if the court were to charge pro hac vice admittees a fee, that money could be employed to reimburse attorneys in pro bono matters. The court adopted the subcommittee's recommendation.

I have continued my strong interest in promoting pro bono representation since joining my current law firm. I am a charter member of my firm's pro bono committee. My firm has adopted our committee's draft policy encouraging our attorneys to undertake pro bono activities and stating that time billed to pro bono files will be treated as billable hours for evaluation purposes. Further, I have personally contacted several entities seeking pro bono work for distribution to attorneys at my firm. Finally, despite the fact that I have been establishing my practice over the past year, I have worked over 40 hours on pro bono matters. These matters have included work for an HIV positive inmate who was denied proper medical care and a minor who was the victim of a sexual assault while institutionalized.

Finally, I have spent a substantial amount of my time assisting charitable organizations (e.g., West Bergen Mental Healthcare) and engaging in efforts to improve the law, legal system and legal profession (e.g., Association of the Federal Bar, Lawyers' Advisory Committee for the U.S. District Court for the District of New Jersey).

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not now and have never belonged to an organization that discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process,

from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I am not aware of a selection commission regarding my nomination.

Regarding my experience in the judicial selection process, I was telephoned by White House Counsel's Office on May 18, 2005, to schedule an interview regarding the vacancy on the United States Court of Appeals for the Third Circuit. I was interviewed at the White House on May 25, 2005, by representatives of the White House Counsel's Office and Department of Justice. On June 28, 2005, I met with New Jersey Senators Corzine and Lautenberg in Senator Lautenberg's Washington office. On September 21, 2005, I received a call from White House Counsel's Office that the President had decided to move forward with me regarding the vacancy on the Court of Appeals for the Third Circuit. On January 25, 2006, President Bush nominated me to be a judge on the Court of Appeals for the Third Circuit.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The federal judiciary has a limited role in our Constitutional system. As a threshold matter, federal judges must always remember that the jurisdiction of the federal courts is limited and must be assured that the court has jurisdiction of a case before proceeding to consider the substantive issues in the case.

Federal judges must decide only the issues properly before them and should scrupulously avoid usurping the roles of the other branches of government with their decisions.

Federal judges must be committed to the rule of law and must adhere to and apply the law and precedent. They should not permit their personal beliefs or points of view to corrupt their decisionmaking in the cases before them.

Not only does the Constitution mandate a restrained role for the judiciary, but also this restrained role is essential to promote uniformity and predictability in our legal system.

AFFIDAVIT

I, Michael A. Chagares, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 3, 2006 (DATE)

(NAME)

(NOTARY)

DIANE ROLFS
A Notary Public of New Jersey
My Commission Expires August 19, 2006

Senator HATCH. Mr. Miller, you have had a distinguished career as a private practitioner. How do you think those experiences have helped prepare you to become a Federal judge?

STATEMENT OF GRAY HAMPTON MILLER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Mr. MILLER. Well, I have been in Federal court a lot, Mr. Chairman, and I have seen good judges and I have seen bad judges. And I have taken a lot of experience and the lessons I have learned from the good judges I hope to apply if I am fortunate enough to be confirmed to this position.

Senator HATCH. That is great. I have heard good things about you, about both of you, and we are really happy to support both of you.

Mr. MILLER. Thank you, sir.

Mr. CHAGARES. Thank you, Mr. Chairman.

[The biographical information of Mr. Miller follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   Gray Hampton Miller.

2. **Address: List current place of residence and office address(es).**

   Residence: Houston, Texas

   Office: Fulbright & Jaworski L.L.P.
   1301 McKinney, Suite 5100
   Houston, Texas 77010

3. **Date and place of birth.**

   December 9, 1948, in Houston, Texas.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Married to Joanne (Smaistrla) Miller.
   My wife is not employed outside the home.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   University of Houston Law Center - September 1974 to May 1978
   J.D. Awarded May 1978

   University of Houston - January 1969 to May 1974
   B.A. (History) Awarded May 1974

   United States Merchant Marine Academy - July 1967 to January 1969
   No Degree (honorably disenrolled)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

2002-2004: Texas Department of Mental Health & Mental Retardation
Member of Board (2002-2004) (note: Board abolished by Texas Legislature in 2004)
Vice Chair, Operations Committee
Member, Finance Committee
Board Liaison to Community Centers for Contracts
1991-1999: Mental Health/Mental Retardation Authority of Harris County, Texas
Member of Board of Trustees (1991-1999)
Secretary of Board of Trustees (1992-1997)
Chair of Board of Trustees (1997-1999)
1978-Present: Fulbright & Jaworski L.L.P., partner 1986 to present
1969-1978: Houston Police Department

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

None.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Page, United States House of Representatives, 1965
United States Merchant Marine Academy, Honors First and Second Quarters 1967
University of Houston Dean's List
Fall 1971, Spring 1972, Fall 1972, Spring 1973, Fall 1973, Spring 1974
University of Houston School of Law
Order of the Barons
American Jurisprudence Award - Family Law
Selected by Fulbright & Jaworski to participate in lawyer exchange program with Kirlin, Campell & Keating in New

York City, January-June 1980
Instructor, Fulbright & Jaworski in-house litigation training program (and graduate of first program in 1978)
Media Resource for Admiralty & Maritime Law in Houston Bar Association Media Resource Guide
Best Lawyers in America, 2001/2002, 2003/2004 and 2005/2006 Editions
Texas Super Lawyer, 2003 and 2004
Euromoney Guide to the World's Leading Maritime Lawyers, 2003
Who's Who in American Law, 2005/2006 Edition

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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
Member, Tort, Trial and Insurance Practice and Dispute Resolution Sections
Vice Chair of Admiralty & Maritime Committee, TIPS (1993-1994)
American Arbitration Association
Member of Commercial Arbitration Panel and Trained Mediator
AIDA Reinsurance and Insurance Arbitration Society (ARIAS)
Maritime Law Association of the United States
Proctor in Admiralty
Former member of Alternative Dispute Resolution Committee
Southeastern Admiralty Law Institute
Member, Board of Directors (1990-1991)
State Bar of Texas
Member of Insurance Law Section, Litigation and ADR Sections
Houston Bar Association
Member, Litigation Section
Houston Bar Foundation
Sustaining Life Fellow
Texas Bar Foundation
Fellow
College of the State Bar of Texas, 2005
Houston Mariners Club
Skipper (1994-1995)
Houston Maritime Arbitrators Association

Houston Maritime Association
Houston Marine Insurance Seminars, Inc.
Member of Planning Committee for Annual Seminar
Member of Executive Committee

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

The only organization to which I belong that is active in lobbying before public bodies is the Greater Houston Partnership - I am a member of the World Trade Supervisory Board. The following is a list of the other organizations to which I belong:

100 Club of Houston
Life Member
Strake Jesuit Alumni Association
Steamship Historical Society of America
Friends of the Hunley
Houston Volunteer Lawyers Program
Volunteer Lawyer

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

All Texas state courts - 1978
United States District Court for the Southern District of Texas - 1979
United States District Court for the Eastern District of Texas - 1979
United States Court of Appeals for the Fifth Circuit - 1979
United States Court of Appeals for the Eleventh Circuit - 1981
Supreme Court of the United States - 1984

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were**

press reports about the speech, and they are readily available to you, please supply them.

"Broker Responsibilities" - Speech to Houston Marine Insurance Seminar (1993) - attached
"Indemnity and Additional Insureds" - University of Texas Admiralty Seminar (1994) - attached
"What is a Vessel?" - University of Texas Admiralty Seminar (1997) - attached
"Winning the Risk Game for Your Client" - *Texas Lawyer* (1998) - attached

I have not given any speeches on issues involving constitutional law or legal policy.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. December 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

I have not been a judge.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

2002-2004: Member of the Board, Texas Department of Mental Health & Mental Retardation (appointed)

1991-1999: Member of the Board of Trustees, Mental Health/Mental Retardation Authority of Harris County, Texas (appointed)

17. **Legal Career:**

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

1. 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;

No.

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

No.

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

1978-Present
Fulbright & Jaworski L.L.P.
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010

1986-Present: Partner
Co-leader of Litigation Team II (2002-Present)
Head of Admiralty Department(1996-2002)
1978-1986: Associate

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

After working my way through undergraduate school and law school as a Houston police officer, I joined the law firm of Fulbright & Jaworski L.L.P. in Houston, Texas as an associate in the Admiralty Department in 1978. I worked for several years as a trial lawyer in state and federal courts defending personal injury and death cases. I also tried many cases arising under the Longshore and Harbor Workers' Compensation Act before administrative law judges of the United States Department of Labor. I represented the employers and insurance carriers in these cases. My largest client at that time was Texas Employers' Insurance Association.

After making partner in 1986, my practice began to change. I began working primarily with the head of the Admiralty Department on insurance cases. In 1992, I became the partner responsible for one of our firm's largest clients, Lloyd's of London. This required me to travel to London several times each year to meet with clients. In many instances, I was hired by excess insurers to monitor cases or to evaluate coverage. During that period, I spent less time in court.

In 1996, I became the head of the Admiralty Department. As a result of this, I took on more administrative responsibilities and was charged with managing the admiralty practice and supervising all of the admiralty attorneys. During this period of time, I appeared in court occasionally.

In January 2002, the Admiralty Department was merged with the Litigation Department. I am now co-leader of Litigation Team II and have begun to appear in court more frequently.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In the early years of my practice, my primary clients were insurance carriers, stevedoring companies, vessel owners, drilling contractors, offshore operators and service contractors. Later, I became the partner primarily responsible for our representation of various underwriters and insurance companies in the London insurance market,

including Lloyd's of London.

During most of my career, I have specialized in the areas of admiralty and maritime law, insurance and insurance coverage litigation (including "bad faith" litigation) and offshore and onshore oil and gas exploration and production issues (including contractual and indemnity issues).

In the last few years, my practice has changed and I am currently representing a pharmaceutical company in product liability litigation. On occasion, I still represent Lloyd's of London and other insurers.

c. **1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

During the period from 1978 to approximately 1986, I appeared in court frequently.

Later, as my practice changed and I spent more time on insurance and insurance coverage matters, my appearances in court were less frequent, although I did still appear in court, usually to argue dispositive motions on insurance coverage.

When I became the head of the Admiralty Department in 1996, I took on more administrative responsibilities and I appeared in court occasionally.

Since 2002, I have been responsible for litigation in state and federal court in Ohio, Pennsylvania, Louisiana and Texas and have began to appear in court more frequently.

2. What percentage of these appearances was in:
(a) federal courts;

40%

(b) state courts of record;

30%

(c) other courts.

30%

3. What percentage of your litigation was:

(a) civil;

100%

(b) criminal.

N/A

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that I have tried in excess of 80 cases to verdict or judgment in which I was the sole or chief counsel. I would estimate I have tried fewer than 10 cases to verdict or judgment in which I was associate counsel or second chair.

5. What percentage of these trials was:
(a) jury;

20%

(b) non-jury.

80%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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. The first federal court jury case I tried as lead counsel was Moses Jacobs v. Airlease International Nominee, et al., Civil Action No. 4:81CV-00872, in the United States District Court for the Southern District of Texas, Houston Division. This was a maritime personal injury case involving a longshoreman who claimed he was injured as a result of the negligence of the vessel owner whom I represented. At the close of the plaintiff's case, Judge Ross Sterling granted my motion for a directed verdict. The directed verdict was affirmed on appeal by the Fifth Circuit in an unreported per curiam decision. This case was tried in 1982.

   The plaintiff was represented by Mike A. Atkinson, Atkinson & Associates, 322 Collins Street, Conroe, Texas 77301-2856, Telephone: (936) 756-7719.

2. In the case of Triton v. Sphere Drake Insurance PLC, et al., Civil Action No. DV99-7043-J in the 191st District Court in Dallas County, Texas, I represented one of the defendants, Sphere Drake Insurance PLC. The plaintiff alleged breach of contract, common law bad faith and violations of various sections of the Texas Insurance Code, including Section 21.55 (which imposes an 18% penalty for payments not made promptly in first party cases). I obtained a summary judgment from Judge Katarina Haynes that common law bad faith and Section 21.55 did not apply to a third party claim such as the one involved in this case. This case was handled in 2000.

   The plaintiff was represented by Ernest Martin of Haynes & Boone, 901 Main Street, Suite 3100, Dallas, Texas 75202, Telephone: (214) 651-5574. The co-defendant was represented by Jim Bettis of Harrison, Bettis & Staff, One Allen Center, 500 Dallas Street, Suite 2650, Houston, Texas 77002, Telephone: (713) 655-7511.

3. In the case of North American Shipbuilding, Inc. v. Southern Marine & Aviation Underwriters, et al., in the 129th District Court of Harris County, Texas, I represented the Underwriters at Lloyd's of London who wrote a builders risk insurance policy for North American Shipbuilding. I obtained a summary judgment in which the trial court, the Honorable Greg Abbott, held that the "All Risk" builders risk policy did not

cover the costs incurred by the shipyard to correct defective welds since the construction was initially faulty. This was affirmed on appeal, North American Shipbuilding, Inc. v. Southern Marine & Aviation Underwriting, Inc., 930 S.W. 2d 829 (Tex. App.—Houston [1st Dist.] 1996), no writ. This was an issue of first impression in Texas. This case was handled in 1996.

The plaintiff was represented by Tommy Fibich, Fibich, Hampton, Leebron & Garth, 909 Fannin, Suite 800, Houston, Texas 77010, Telephone: (713) 751-0025. The co-defendant was represented by Mike McCoy, Fowler, Rodriguez & Chalos, 4 Houston Center, 1331 Lamar, Suite 1560, Houston, Texas 77010, Telephone: (713) 654-1560.

4. In 1988, I was contacted by a representative of London underwriters whose insured had just suffered a $10 million adverse verdict in a non-jury cargo damage case in federal district court in Galveston. I was asked to evaluate the case for appeal and then handle the appeal. The decision rested on three separate and independent reasons why the $500 package limitation of the Carriage of Goods by Sea Act did not apply. In order to reverse the judgment, we had to convince the court of appeals to reverse all three findings. I put together and supervised a team of admiralty and appellate lawyers and we succeeded in reversing this judgment in the Fifth Circuit, Sabah Shipyard v. M/V HARBEL TAPPER, 178 F.3d 400 (5th Cir. 1999).

The plaintiff was represented by Alfred Yudes, Watson, Farley & Williams, 100 Park Avenue, 31st Floor, New York, New York 10017, Telephone: (212) 922-2200. The vessel was represented by Kevin Walters, Georgantas & Walters, 815 Walker, Suite 953, Houston, Texas 77002, Telephone: (713) 546-9800. The Fulbright appellate and admiralty lawyers who handled this case under my supervision were Kathy Mackillop and Scott Raynes.

5. In the case of INAC Corp. v. Underwriters of Lloyd's, 56 S.W. 3d 242 (Tex. App.—Houston [14th Dist.] 2001), no writ, I represented Underwriters at Lloyd's in a dispute over cancellation of insurance policies by a premium finance company for nonpayment. The trial court, Judge John Donovan, granted our motion for summary judgment that the notice of cancellation was ineffective since it went to the broker rather than the underwriters. Because it was undisputed that the

broker did not notify the underwriters of the notice of cancellation, the broker agreed to indemnify my clients. When the case was later reversed on my appeal, my clients were fully indemnified by the broker. The case involved interpretation of several provisions of the Texas Insurance Code. This case was handled in 2000-2001.

The plaintiff was represented by Robert Howell of Baker Botts, 98 San Jacinto Boulevard, Suite 5100, Austin, Texas 78701, Telephone (512) 322-2500. The broker was represented in the trial court by Joe Luce, Martin, Disiere, Jefferson & Wisdom L.L.P., 808 Travis, Suite 1800, Houston, Texas 77002, Telephone: (713) 632-1700; and on appeal by George Jackson, Prichard, Hawkins & Young L.L.P., 2727 Allen Parkway, Suite 1605, Houston, Texas 77019, Telephone: (713) 527-8800.

6. In the case of Cheskiewicz v. Aventis Pasteur, et al., in the Court of Common Pleas in Philadelphia, Pennsylvania, I represented SmithKlineBeecham Corporation d/b/a GlaxoSmithKline (GSK). The case involved the allegation that the minor plaintiff developed autism as the result of the preservative in FDA-approved childhood vaccines. The defendants filed a motion for summary judgment on the grounds that the plaintiffs failed to exhaust their remedies under the National Childhood Vaccine Injury Compensation Fund. The trial court, the Honorable Victor J. DiNubile, Jr., granted summary judgment and dismissed the case. After I took over the representation of GSK, I wrote the appellate brief and argued the appeal before the Superior Court of Pennsylvania. The Superior Court agreed with our position and affirmed the dismissal. See, Cheskiewicz v. Aventis Pasteur, Inc., 843 A.2d 1258, 2004 PA Super 40 (2004). This case was handled in 2003-2004.

   The plaintiff was represented by Dominique D. Michel, Miller & Associates, 105 North Alfred Street, Alexandria, Virginia 22314, Telephone: (215) 665-2000. Eli Lilly was represented by Mark A. Dover, Shook, Hardy & Bacon, 2555 Grand Boulevard, Kansas City, Missouri 64108, Telephone: (816) 474-6550.

7. In the case of Francis E. Lauzon v. Strachan Shipping Company, I represented Strachan Shipping Company and Texas Employers' Insurance Association. Mr. Lauzon's

claim under the Longshore & Harbor Workers' Compensation Act (LHWCA) was settled and the insurance carrier did not pay the agreed amount until 13 days after the award was filed. Under the terms of the LHWCA, payment was required within 10 days of the date of the award, or a 20% penalty was due. The Department of Labor found that the payment was not timely and assessed the 20% penalty. Such an order is enforced in federal district court and the plaintiff filed suit in federal district court in Galveston, Texas. On behalf of the defendants, I argued that Rule 6(e) of the Federal Rules of Civil Procedure applied to Section 914(f) of the LHWCA to extend the time for payment. Although this issue had not been addressed by the Fifth Circuit, the district court, the Honorable Hugh Gibson, disagreed. On appeal, the Fifth Circuit affirmed, despite conceding that "Texas Employers' presents a strong argument that the [Federal] Rules apply to the instant penalty assessment." See, Lauzon v. Strachan Shipping Co., 782 F.2d 1217, 1220 (5th Cir. 1985). This case was handled in 1984-1985.

The plaintiff in this case was represented by Joel Ellis (deceased).

8. In the case of United Marine Enterprises v. Nabors Offshore, Civil Action No. 4:02CV2044, filed in federal district court in Beaumont, Texas, I represented Nabors Offshore which had several of its offshore drilling rigs seized by United Marine in a dispute over payment for repairs. The rigs were arrested in rem under the admiralty jurisdiction of the federal court. I successfully negotiated the release of the rigs and the subsequent transfer of the case to Houston. Later, after unsuccessfully attempting to negotiate a settlement, the case went to trial before Judge Ewing Werlein. An associate in our firm, Christopher Daniels, took the lead in the trial of this case under my supervision. After two days of trial, Judge Werlein suggested that the parties discuss settlement with the magistrate judge. The case was settled on terms favorable to Nabors. This case was handled in 2003.

The plaintiff was represented by Carl Parker, 1 Plaza Square, Port Arthur, Texas 77642; Telephone: (409) 722-8111.

9. In the case of Dockside Terminal Services v. Port Houston Marine, filed in state court in Harris County, Texas, I represented Port Houston Marine, the employer of a longshoreman who was injured when he was struck by a crane operated by Dockside. When Dockside was sued by the injured longshoreman, it filed a third-party action against Port Houston Marine alleging that there was an implied indemnity agreement in the oral contract to provide a crane. Testimony established that it was customary for the party renting the crane (Port Houston) to provide a flagman and it was undisputed that there was not a flagman present when the injury occurred.

   The trial court, the Honorable John Ray Harrison, granted my motion for summary judgment based on Section 905 of the LHWCA and Dockside appealed. The court of appeals held that the failure of Port Houston to provide a flagman was "evidence of an implied contract of indemnity." The court reversed and remanded.

   Because we believed the court had erroneously concluded that breach of an oral contract gave rise to an implied indemnity obligation, we appealed this case to the Texas Supreme Court and then to the United States Supreme Court, which denied certiorari. See, Dockside Terminal Services v. Port Houston Marine, 658 S.W. 2d 191 (Tex. App.—Houston [1st Dist.] 1983), writ refused n.r.e., cert. denied, 467 U.S. 1253 (1984). This case was handled in 1982-1984.

   Dockside was represented by Michael Orlando, Meyer Orlando LLC, 13201 Northwest Freeway, Suite 119, Houston, Texas 77040, Telephone: (713) 460-9800.

10. In the case of R.G. Speakes v. Trikora Lloyd PT, filed in federal court in Houston, I represented Texas Employers' Insurance Association (TEIA) which intervened in this longshoreman's personal injury case against the owner of the vessel on which he was injured. TEIA had paid compensation and medical benefits to the plaintiff as a result of his injury and was subrogated by statute to any recovery made against the vessel owner. Two days prior to trial, the plaintiff and defendant settled the case for $20,000, all of which was paid to the plaintiff. TEIA did not participate in the settlement and the defendant refused to pay the lien. In the settlement with the plaintiff,

the defendant agreed that it would "take care of" the compensation lien.

After the defendant and intervenor filed cross motions and after two oral arguments, the district court, the Honorable Carl O. Bue, granted my motion for summary judgment and allowed TEIA to recover the full amount of the lien from the defendant. See, Speakes v. Trikora Lloyd P.T., 650 F.Supp. 958 (S.D. Tex. 1987). This case was handled in 1986-1987.

The plaintiff was represented by Atreus M. Clay (deceased). The defendant was represented by Kenneth D. Kuykendall, Royston, Rayzor, Vickery & Williams, 1001 McKinney, Suite 1100, Houston, Texas 77002, Telephone: (713) 224-8380.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

In 1980, I was selected by Fulbright & Jaworski to take part in a lawyer exchange program with the New York maritime law firm of Kirlin, Campbell & Keating. My family and I moved to New York City for six months and I worked in the cargo and charter party department handling maritime arbitration cases. Fulbright & Jaworski asked me to learn this area of law anticipating that Houston would become a center of maritime arbitration, but this did not occur. Nevertheless, during this period I broadened my knowledge of maritime law and worked with many respected members of the New York admiralty bar.

For many years, I have participated in Fulbright & Jaworski's trial advocacy program for first year lawyers as an instructor and mock trial judge. I was a graduate of the first program in 1978 and believe it is important to train our young lawyers not only in oral advocacy, but also in the ethical obligations they have as members of the legal profession.

Fulbright & Jaworski has a strong tradition of excellence in litigation and also in community service. I have tried to

carry on that tradition in my role as an instructor in our trial advocacy program and as a mentor to new associates.

I have also devoted many hours to service on the board of the Mental Health/Mental Retardation Authority of Harris County, Texas and the board of the Texas Department of Mental Health and Mental Retardation. Although my role on these boards did not involve giving legal advice, I did, on occasion, use my legal background and experience to provide guidance to the board.

Since approximately 1994, I have served on the Houston Marine Insurance Seminar planning committee. This committee plans and puts on a yearly seminar which addresses current practical and legal issues in the areas of marine and energy insurance. The seminar is attended by insurance professionals and attorneys from the United States and abroad. Speakers usually include insurance underwriters, brokers, adjusters, lawyers and purchasers of insurance. I have been a member of the Houston Marine Insurance Seminar Executive Committee since 2002. I am also responsible for obtaining continuing legal education credit for the lawyers attending the seminar.

Recently, I have been retained in two cases to testify as an expert witness. One case dealt with insurance coverage and the other dealt with oil and gas operations and the workings of the London insurance market.

In addition, there have been many cases in which I was hired by insurers to review coverage and no litigation ensued after coverage was denied based on my advice to the insurers. I have also been hired by insurers to provide second opinions on liability, damages and insurance coverage in various cases, some in litigation and some not.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   If I am confirmed for this position, I would terminate my relationship with Fulbright & Jaworski L.L.P. At that time, I would receive a lump sum benefit from the Fulbright & Jaworski Defined Benefit Plan of approximately $1.1 million, my 401(k) of approximately $204,505, and my firm profit sharing account of approximately $127,159. In addition, following my withdrawal as a partner in Fulbright & Jaworski L.L.P., I will receive payment for my capital account as a partner in the firm including my share of undistributed income of the firm attributable to the period down to the date of my withdrawal. The exact amount of this payment cannot be determined until after the partnership's books for the year of my withdrawal have been closed, but I would estimate it will be approximately $200,000. No other payments or benefits are anticipated.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   Potential conflicts of interest during my initial service, if confirmed, would include cases involving my former law firm and former clients. In resolving any potential conflict of interest, I would comply with the Ethics Reform Act of 1989, 28 U.S.C. Section 455, 28 U.S.C. Section 144, dealing with disqualification of judges, the Code of Conduct for United States Judges and all other applicable requirements.

3. **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.

4. **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, patents, 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.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached financial net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I have worked as a volunteer in the campaigns of Steve Radack for constable, Precinct 5 of Harris County, Texas and for commissioner, Precinct 3 of Harris County, Texas. These campaigns took place over the last 15 years.

   For the past several years I have served as campaign treasurer for Chief Justice Sherry Radack, 1st Court of Appeals, Texas. I resigned that position on December 16, 2005.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
MILLER, GRAY H	Dist. Court, So. Dist. Texas	01/26/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge - nominee	◉ Nomination, Date 01/25/2006 ○ Initial ○ Annual ○ Final	01/01/2005 to 12/31/2005
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
1301 McKinney Street Suite 5100 Houston, TX 77010	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Fulbright & Jaworski L.L.P.

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

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2005	Payment of Fulbright & Jaworski L.L.P. partnership capital account
2.	2005	Payment of Fulbright & Jaworski L.L.P. defined benefit plan lump sum plus 401(k) and profit sharing

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MILLER, GRAY H	01/26/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	Fulbright & Jaworski L.L.P. (Income and Interest Income)	$579,387
2.	2005	Fulbright & Jaworski L.L.P. (Income and Interest Income)	$591,850
3.	2006	Fulbright & Jaworski L.L.P.	$20,000

B. Spouse's Non-Investment Income (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MILLER, GRAY H	01/26/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Chase Bank	Credit card	J

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
MILLER, GRAY H	01/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children See pp. 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Chase Bank	A	Interest	J	T	Exempt				
2. Everbank	A	Interest	L	T					
3. Fidelity Select Energy Serv.		None	K	T					
4. Fidelity Cash Reserves	B	Dividend	L	T					
5. Excelsior Fund L P.	A	Interest	L	T					
6. Glenrock Global Partners L.P.	A	Dividend	M	T					
7. Alpha Equity International Mkt. Neutral Fund	A	Dividend	M	T					
8. Strategic Capital Partners, Inc.	B	Dividend	M	T					
9 Nippon Renewal Partners L.P.	A	Dividend	M	T					
10. Prudent Bear Fund	A	Dividend	K	T					
11. Fulbright & Jaworski L.L.P. 401(k)	B	Interest	M	T					
12. Fulbright & Jaworski L.L.P. profit sharing	B	Interest	M	T					
13. IRA #1 Rydex Juno Fund	A	Dividend	K	T					
14. IRA #2 Rydex Juno Fund	A	Dividend	K	T					
15 Note from Bobby and Jacquie Smaistrla		None	J	T					
16. Fulbright & Jaworski L.L.P. defined benefit plan		None	P1	W					
17. Fidelity Select Energy Service	A	Dividend	J	T					
18. Fulbright & Jaworski L L.P. Capital Account		None	M	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MILLER, GRAY H	01/26/2006

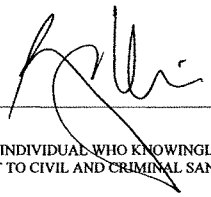
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MILLER, GRAY H	01/26/2006

IX. CERTIFICATION.

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

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

Signature  Date 1/26/06

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		75	172	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		583	731	Notes payable to relatives			
Unlisted securities--add schedule		787	412	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	000
Due from relatives and friends		9	500	Unpaid income tax (due 2/28/06)		50	000
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		675	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
Present value of Fulbright & Jaworski defined benefit plan	1	100	000				
				Total liabilities		52	000
				Net Worth	3	328	815
Total Assets	3	380	815	Total liabilities and net worth	3	380	815
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT NET WORTH SCHEDULES

SCHEDULE OF LISTED SECURITIES

Mutual Funds	
Prudent Bear Fund (BEARX)	$ 48,997
Fidelity Cash Reserves (FDRXX)	$ 70,015
Fidelity Select Energy (FSENX)	$ 36,778
Fidelity Select Energy Service (FSESX)	$ 11,887
*Fidelity Retire Money Market (FRTXX)	$346,636
**Rydex Juno (RYJUX)	$ 69,418
TOTAL	$583,731

* Profit sharing and 401K
** IRA

SCHEDULE OF UNLISTED SECURITIES

Limited Partnerships	
Strategic Capital Partners, Inc.	$209,157
Alpha Equity International Market Neutral Fund, L.P.	$113,768
The Excelsior Fund L.P.	$ 50,330
Nippon Renewal Partners, L.P.	$102,973
Glenrock Global Partners, L.P.	$111,184
Fulbright & Jaworski L.L.P. Capital Account	$200,000
TOTAL	$787,412

SCHEDULE OF REAL ESTATE OWNED

Personal Residence, Houston, Texas	$275,000
Weekend Home, Coldspring, Texas	$400,000
TOTAL	$675,000

III. GENERAL (PUBLIC)

1. **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 legal career, I have devoted time to community service as well as pro bono legal work.

I am a member of the Houston Volunteer Lawyers Program and have defended an indigent woman in a personal injury case brought by a home health care provider. In addition, I recently handled a pro bono divorce case in which the husband and wife decided to reconcile before the final divorce hearing, but after we had obtained temporary orders of custody and support.

I also consider my community work on the Board of Trustees of the Mental Health/Mental Retardation Authority of Harris County, Texas and on the Board of the Texas Department of Mental Health & Mental Retardation to be pro bono work since those served by these agencies are generally economically disadvantaged in addition to suffering from mental illness or mental retardation. I served on the Board of Trustees of the Mental Health/Mental Retardation Authority of Harris County, Texas from 1991 to 1999, the last two years as chairman.

I served on the Board of the Texas Department of Mental Health & Mental Retardation from 2002 until 2004 when the Board was abolished as the state consolidated health and human services agencies.

My wife and I actively support two schools for students with learning disabilities and drug and alcohol problems in Houston - Monarch School and Archway Academy.

I have been involved over the last two years on a pro bono basis with a public charity, the TEXAS Our Texas Foundation. This foundation was established to take archived material from the locally-produced television series "The Eyes of Texas" and produce a series of 50 thirty-minute DVDs to be

used as an aid in teaching Texas history in all public and private schools in Texas.

In addition, my wife and I have recently become active in Habitat for Humanity in San Jacinto County, Texas.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I have never belonged to any organization that invidiously discriminates on the basis of race, sex or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes, there is a Federal Judicial Evaluation Committee which has been set up by our Senators to recommend candidates for nomination to federal courts in Texas. The committee screened and interviewed candidates and recommended that the Senators interview me and three others for this nomination. After these interviews, Senator Hutchison and Senator Cornyn recommended me to President Bush for this nomination.

The following is a description of my experience in the entire judicial selection process:

In May 2005, Judge Ewing Werlein announced that he would take senior status in December 2005. The Texas Senators announced that they would take applications for this position and I submitted an application.

I was interviewed by the Senators' Federal Judicial Evaluation Committee on July 29, 2005.

On August 1, 2005, I met with a member of the committee who was not able to attend the previous interview.

On August 30, 2005, I interviewed with Senator Hutchison and Senator Cornyn.

On August 31, 2005, Senator Hutchison and Senator Cornyn announced that they were recommending me to President Bush for nomination as a federal district judge.

On September 21, 2005, I met with staff from the Office of the White House Counsel and the Department of Justice. Thereafter, I completed nomination forms and a background investigation. I was nominated by the President on January 25, 2006.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our Constitution establishes three branches of government - the legislative branch, the executive branch and the judicial branch. Each branch is co-equal with the others and together each branch serves to check and balance the other branches.

While the judicial branch is an important part of our constitutional system, the role of courts is limited. Judges must interpret and apply the law, not make law. The courts must decide cases according to the Constitution and the laws of the United States. Judges must put aside their personal views and decide cases on the law alone. A district court judge is also constrained by precedent from the courts of appeal and the United States Supreme Court.

A court can only decide cases in which it has jurisdiction, in which the plaintiff has standing and in which the controversy is ripe for decision. A court can only decide issues that are properly before the court and the remedy fashioned by the court should not exceed that which is necessary to resolve the issue(s) which are properly before the court.

A judge's role is to interpret and apply the law and leave legislation to the legislators.

AFFIDAVIT

I, GRAY HAMPTON MILLER, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/27/2006
(DATE)

(NAME)

GRETCHEN M. SEIDL
NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires
JULY 28, 2006

(NOTARY)

Senator HATCH. Dr. Sedgwick, your academic work covers a wide range of subjects, everything from politics to history to social science. Can you just tell the Committee a little bit about your scholarship and how that has prepared you to serve as Director of the Bureau of Justice Statistics?

STATEMENT OF JEFFREY L. SEDGWICK, NOMINEE TO BE DIRECTOR, BUREAU OF JUSTICE STATISTICS, DEPARTMENT OF JUSTICE

Mr. SEDGWICK. Yes, Senator, I can. My dissertation work, which led to my book, was on the application of economic and sociological approaches to the study of crime as they related to the question of law enforcement planning. I have also written fairly widely on the death penalty and also on deterrence and retribution, different theories of punishment and their purposes. So I have taught and done research on criminal justice issues for a good part of my 28-year career as a professor.

Senator HATCH. That is great.

[The biographical information of Mr. Sedgwick follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Jeffrey Leigh Sedgwick

2. Address: List current place of residence and office address(es.)

   Permanent Residence:
   Amherst, Massachusetts 01003

   Current Residence:
   Arlington, Virginia 22202

   Office:
   (on leave without pay, January – December 2006)
   University of Massachusetts, Amherst
   Amherst, Massachusetts 01003-9277

3. Date and place of birth.

   December 11, 1951
   Columbus, Ohio

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Patricia Young Sedgwick (nee Patricia Barbara Young)

   Instructional Paraprofessional
   Amherst Pelham Regional High School
   21 Mattoon Street
   Amherst, Massachusetts 01002

   Retail Sales
   Artisan Gallery
   162 Main Street
   Northampton, Massachusetts 01060

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Kenyon College (September 1969 – May 1973)	A.B. May 1973
University of Virginia (September 1973 – August 1978)	M.A.P.A May 1975
	Ph.D. August 1978

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Association for the Study of Free Institutions and Free Societies	
	(Member) 2004 – present
	(President) 2004 – present
	(Director) 2004 - present)
Great Trails Council #243, Boy Scouts of America	
	(Member) 1985 – present
	(President) 1999 – 2003
	(Director) 1996 – present
Amherst Town Finance Committee	(Member appointed by Town Meeting Moderator) 1/1995 – 12/1995
Smith College	(Visiting Associate Professor of Government) spring 1994, spring 1988 and fall 1985
University of Massachusetts, Amherst	(Associate Professor) 1/1985 – present (on leave without pay, January – December 2006)
	(Assistant Professor) 9/1978 – 12/1983
Institute for Training and Development	(Consultant/Project Director) 1/1996 – 1/2004
United States Department of Justice, Bureau of Justice Statistics	
	(Deputy Director) 1/1984 – 12/1984
University of Virginia	(Visiting Assistant Professor) 9/1977 – 8/1978
	(Instructor) 9/1975 – 12/1975
	(Teaching Assistant) 9/1974 – 5/1975
	(Research Assistant) 9/1973 – 5/1974
Sears Roebuck and Company	(Clerical) 1/1976 – 8/1977
Home Improvement Contractor	(Fence Installer) 6/1973 – 8/1973

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Alpha Lambda Delta National Academic Honor Society for Freshmen (honorary member), 29 February 2004
Honored Foreign Member, International Center of Legal Problems of Intellectual Property, Kyiv, Ukraine, 10 December 2001
Honored Professor of Uzhhorod State Institute of Information Science, Economics and Law, Uzhhorod, Ukraine, 28 November 2001
Dean's Public Service Award, College of Social and Behavioral Sciences, University of Massachusetts-Amherst, 19 May 2000
TEACHnology Fellow, Center for Teaching, University of Massachusetts-Amherst, 1997-1998
Golden Key National Honor Society (honorary member), 1990
Thomas Jefferson Fellowship, University of Virginia, 1973-1974, 1976-1977
Phi Beta Kappa, Kenyon College (Beta of Ohio), 1973
A.B. Magna cum Laude with Honors in Political Science, Kenyon College, 1973

National Merit Scholarship, Kenyon College, 1969-1973

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Organizer of panels sponsored by The Center for the Study of the Constitution at the 1983, 1984, 1985, 1986, 1987, 1988, 1989 and 1990 annual meetings of the American Political Science Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Political Science Association (Member, 1978 – present)
Amherst Woods Homeowner's Association (1987 – present)
Association for the Study of Free Institutions and Free Societies (Member, 2004 – present; President, 2004 – present; Director, 2004 - present)
Great Trails Council #243, Boy Scouts of America (Member, 1985 – present; President, 1999 – 2003; Director, 1996 – present)
University Club, University of Massachusetts (1978 – present)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Not Applicable

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Books:

Law Enforcement Planning: The Limits of an Economic Analysis. Westport: Greenwood Press, 1984.

Monographs:

The Legal Parameters of Term Limitations for United States Congressmen and Senators. Washington, DC: National Legal Center for the Public Interest, 1993. (Vol. 5, No. 3 in NCLPI White Paper Series, April 1993). 23 pp.

Deterring Criminals: Policymaking and the American Political Tradition. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1980.

Book Chapters:

"Abraham Lincoln and the Character of Liberal Statesmanship," in *Legacy of Disunion: The Enduring Significance of the American Civil War*. Ed. Susan-Mary Grant and Peter J. Parrish. Baton Rouge, LA: Louisiana State University Press, 2003. (Pp. 100-115)

"Jeffersonianism in the Progressive Era," in *Reason and Republicanism: Thomas Jefferson's Legacy of Liberty*. Ed. Gary L. McDowell and Sharon L. Noble. Lanham, MD: Rowman and Littlefield publishers, Inc., 1997. (Pp. 189-204)

"The Massachusetts General Court and the Commonwealth's Political Crisis," in *The Reform of State Legislatures and the Changing Character of Representation.* Ed. Eugene W. Hickok. Lanham, MD: University Press of America, 1992. (Pp.)

"Tenure in Office and the President's Role as Chief Executive," in *Restoring the Presidency: Reconsidering the Twenty-Second Amendment*. Washington, DC: National Legal Center for the Public Interest, 1990. (Pp. 77-89)

"Reason, Anger and Retribution," in *Crime and Punishment: Issues in Criminal Justice*. Ed. Fred Baumann. Charlottesville: University of Virginia Press, 1989. (Pp. 41-61)

"Bureaucracy and Human Nature: The American Response," (with George T. Sulzner) in *Politics and Human Nature*. Ed. Ian Forbes and Steven Smith. London: Francis Pinter, 1983. (Pp. 145-164)

"Fiscal Policy in Massachusetts under Proposition 2½," (with Jerome M. Mileur), in *The Publius Annual Review of American Federalism: 1981*. Ed. Stephen Schecter. Lanham, MD: University Press of America, 1983. (Pp. 93-103)

"Deterrence Versus Retribution: A Debate on the Meaning of Punishment," in *Policy Implementation: Penalties or Incentives?* Ed. John Brigham and Don W. Brown, Beverly Hills: Sage Publications, 1980. (Pp. 89-102)

Articles:

"Martin Diamond's Interpretation of *Federalist* 10: A Response to Alan Gibson," *POLITY*, XXV (1993), 529-536.

"James Madison and the Problem of Executive Energy," *POLITY*, XXI (1988), 3-24.

"Evaluating Reagonomics: A Reply to Michael Comiskey," *POLITY*, XX (1987), 332-337.

"Of Centennials and Bicentennials: Reflections on the Foundations of American Public Administration," *Administration & Society*, XIX (1987), 285-308.

"Checks and Balances Encourage Responsibility," *POLITY*, XIX (1987), 667-672.

"Executive Leadership and Administration: Founding versus Progressive Views," *Administration & Society*, XVII (1986), 411-432.

"The Prospects of 'Restoring the Federal Balance'," *POLITY*, XVII (1984), 66-87.

Opinion/Editorial Essays:

"Rule by Referendum Weakens Political Parties" (with Jerome M. Mileur), *Boston Globe*, CCLIX (January 13, 2001), A15.

"Commerce and the Constitution," released for syndicated publication November 1986 by Public Research, Syndicated of Montclair, California. Reprinted in *The New Federalist Papers*, ed. J. Jackson Barlow, Dennis J. Mahoney and John G. West, Jr. Lanham, MD: University Press of America, 1988. (Pp. 381-384) (I am unable to locate a copy of this text.)

"Can Demography Explain Falling Crime?" (with Steven R. Schlesinger), *Wall Street Journal*, CCIII (June 14, 1984), 30. (I am unable to locate a copy of this text.)

"Punishment to Fit," *Hartford Courant*, CXLIV (February 26, 1981), A-19. (I am unable to locate a copy of this text.)

Participation in Professional Association Meetings

Presented paper, "Nature, Convention and Deliberation," cosponsored by The Center for the Study of the Constitution and the Conference Group on Law and Jurisprudence at the American Political Science Association annual meeting. Washington, DC - September 4, 1988

Presented paper, "Abraham Lincoln and the Character of Liberal Statesmanship," Southwest Social Science Association annual meeting. Houston, Texas - March 24, 1988. (Published as "Abraham Lincoln and the Character of Liberal Statesmanship," in *Legacy of Disunion: The Enduring Significance of the American Civil War*. Ed. Susan-Mary Grant and Peter J. Parrish. Baton Rouge, LA: Louisiana State University Press, 2003. (Pp. 100-115))

Presented paper, "Commerce and the Constitution: Founding Versus Progressive Views," sponsored by The Center for the Study of the Constitution at the American Political Science Association annual meeting. Chicago, Illinois - September 6, 1987.

Participant in the POLITY Forum panel discussion, "Should the Separation of Powers be Altered?" sponsored by *POLITY*, the journal of the Northeast Political Science Association, at the 1986 annual meeting of the Northeast Political Science Association. Boston, Massachusetts - November 14, 1986.

Presented paper, "James Madison and the Problem of Executive Energy," Southwestern Political Science Association annual meeting. San Antonio, Texas - March 21, 1986. (Published as "James Madison and the Problem of Executive Energy," *POLITY*, XXI (1988), 3-24.)

Presented paper, "Of Centennials and Bicentennials: Reflections on the

Foundations of American Public Administration," American Political Science Association annual meeting. New Orleans, Louisiana - September 1, 1985. (Published as "Of Centennials and Bicentennials: Reflections on the Foundations of American Public Administration," *Administration & Society*, XIX (1987), 285-308.)

Presented paper, "Human Nature and Bureaucracy: Founding Versus Progressive Views," sponsored by The Center for the Study of the Constitution at the American Political Science Association annual meeting. Chicago, Illinois - September 2, 1983. (Published as "Bureaucracy and Human Nature: The American Response," (with George T. Sulzner) in *Politics and Human Nature*. Ed. Ian Forbes and Steven Smith. London: Francis Pinter, 1983. (Pp. 145-164))

Presented paper, "The Prospects for 'Restoring the Federal Balance,'" American Political Science Association annual meeting. Denver, Colorado - September 3, 1982. (Published as "The Prospects of 'Restoring the Federal Balance'," *POLITY*, XVII (1984), 66-87.)

Presented paper, "Lobbying for the States: Public Sector Politics and the New Federalism," Western Social Science Association annual meeting. Denver, Colorado - April 22, 1982. (Revised and published as "The Prospects of 'Restoring the Federal Balance'," *POLITY*, XVII (1984), 66-87.)

Speeches

Invited speaker on the topic, "Industrial Development, Immigration and Westward Expansion: Before and After Independence," at the *Conference on the Teaching of American History* sponsored by: The Ministry of Education of Trinidad and Tobago; The History Teachers Association of Trinidad and Tobago; The History Department of the University of the West Indies; and with support from the Public Affairs Section, United States Embassy - Port of Spain. St. Agustine, Trinidad and Tobago - April 21 - 22, 2005.

Invited speaker on the topics, "U.S. Government: Overview," "Thomas Jefferson and His Philosophy," "The U.S. Economy: Overview," and "Abraham Lincoln and the Time of the Civil War" at the conference, *Continuity and Change in American Studies: 5th Annual American Studies Summer School*, sponsored by: Public Affairs Section, United States Embassy - Kiev and The Ukrainian Catholic University. Lviv, Ukraine - May 29 - June 5, 2004.

Invited speaker on the topics, "Perceptions of the U.S. in the 21st Century – Redefining the U.S. after September 11, 2001" and "The Relationship between the U.S. and the E.U." at the conference, *Redefining the United States in the 21st Century*, sponsored by: Public Affairs Section, United States Embassy – Belgium; the Katholieke Hogeschool Mechelen – campus Coloma; and the Commission for Educational Exchange between the United States, Belgium and Luxembourg. Mechelen, Belgium – May 8, 2002.

Invited speaker on the topic, "Ethics and Local Government: Inside Views from Russia (Tver) and Ukraine (Uzhgorod)," *Five College Slavic Seminar*.

Northampton, MA - April 26, 2001. (I am unable to locate a copy of my comments.)

Invited speaker (with Lesya Andriivna Loyko) on the topic, "Public Administration Reform and the Rule of Law: The Dilemma of Democratization" at the conference, *Political Reform in Ukraine*. Kiev, Ukraine – November 25, 2001.

Invited speaker on the topic, "The Problems of Development and Management of Integration Processes on the International Market of Higher Education and Science: Some Preliminary Thoughts" at the conference, *The Problems of Development and Management of Integration Processes on the International Market of Higher Education and Science*, sponsored by the Uzhgorod State Institute of Information Sciences, Economics and Law. Snina, Slovakia – October 27, 2001.

Invited speaker on the topic, "Values, Democracy and Presidential Elections in the U.S.A.," sponsored by: Public Affairs Section, United States Embassy – Berlin; PLIB Struveshof/Außenstelle Prenzlau; and Langenscheidt/Longman Publishing House. Oranienburg, Germany – November 10, 2000.

Invited speaker on the topic, "Capital Punishment: An Overview," at The Law Librarians of New England Fall Conference, *The Death Penalty Debate*. West Springfield, MA - October 20, 2000.

Invited speaker on the topic, "Abraham Lincoln and the Character of Liberal Statesmanship," at the Institute of United States Studies' conference, *The Enduring Significance of the Civil War*. University of London, July 13-14, 1997. (Published as "Abraham Lincoln and the Character of Liberal Statesmanship," in *Legacy of Disunion: The Enduring Significance of the American Civil War*. Ed. Susan-Mary Grant and Peter J. Parrish. Baton Rouge, LA: Louisiana State University Press, 2003. (Pp. 100-115))

Invited speaker on the topic, "Thomas Jefferson's Legacy to the Progressive Era," at the Institute of United States Studies' conference, *Thomas Jefferson's Legacy of Liberty*. University of London, November 22-23, 1993. (Published as "Jeffersonianism in the Progressive Era," in *Reason and Republicanism: Thomas Jefferson's Legacy of Liberty*. Ed. Gary L. McDowell and Sharon L. Noble. Lanham, MD: Rowman and Littlefield publishers, Inc., 1997. (Pp. 189-204))

Invited speaker on the topic, "Independent Regulatory Commissions and the Separation of Powers," at the American Bar Association's *Constitutional Institute for Teachers*. Washington, DC - June 21, 1989. (I am unable to locate a copy of my comments.)

Invited speaker on the topic, "Abraham Lincoln and the Character of the American Presidency," at the summer seminar, *Citizenship, The Constitution, and the Bill of Rights*, sponsored by St. Joseph's University and the Freedoms Foundation at Valley Forge. Valley Forge, Pennsylvania - August 9, 1988. (I am unable to locate a copy of my comments.)

Invited speaker on the topic, "The American Presidency from Lincoln to Wilson," at the summer seminar, *The American Presidency*, sponsored by Pennsylvania State University and the Freedoms Foundation at Valley Forge. Valley Forge, Pennsylvania - July 18, 1988. (I am unable to locate a copy of my comments.)

Invited speaker on the topic, "Abraham Lincoln's Constitutional Critique of Abolitionism," at the bicentennial conference, *Free Soil and the Constitution*, sponsored by Ripon College and the National Endowment for the Humanities. Ripon, Wisconsin - September 18-19, 1987. (I am unable to locate a copy of my comments.)

Invited participant in a debate on the Death Penalty, sponsored by the Northampton chapter of Amnesty International. Northampton, Massachusetts - December 6, 1986.

Invited participant in the Institute for American Values' symposium, *Capital Punishment Resurgent: Whose Moral Values Should Inform Democratic Judgment?* Dudley, Massachusetts - February 20, 1986. (I am unable to locate a copy of my comments.)

Invited participant in a debate on the Death Penalty, sponsored by the Williams College student chapter of Amnesty International. Williamstown, Massachusetts - September 30, 1985. (I am unable to locate a copy of my comments.)

Invited speaker on the topic "Commerce and the Federalist" in the Institute for American Values' symposium, The American Founding: Federalist, Anti-Federalist and Revisionist Perspectives. Dudley, Massachusetts - February 11-12, 1982. (Comments revised, extended and represented as "Commerce and the Constitution: Founding Versus Progressive Views," sponsored by The Center for the Study of the Constitution at the American Political Science Association annual meeting. Chicago, Illinois - September 6, 1987.)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent (Last physical examination – 27 December 2005)

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member, Amherst Town Finance Committee (appointed by Town Meeting Moderator)
1/1995 – 12/1995

15. Legal Career:

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

1. 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;

Not applicable

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

Not applicable

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

Not applicable

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Not applicable

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Not applicable

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Not applicable

2. What percentage of these appearances was in:

(a) federal court;

Not applicable

(b) state courts of record;

Not applicable

(c) other courts.

Not applicable

3. What percentage of your litigation was:

(a) civil:

Not applicable

(b) criminal.

Not applicable

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Not applicable

5. What percentage of these trials was:
(a) jury;

Not applicable

(b) non-jury.

Not applicable

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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;

Not applicable

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

Not applicable

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

(in lieu of the above, I submit the following professional reputation list.)
Dr. Patrick F. Deneen, Markos & Eleni Tsakopoulos-Kounalakis Associate Professor of Government, Georgetown University (202) 687-5708
Dr. Michael T. Hannahan, Director, University of Massachusetts Civic Initiative (413) 545-4845
Assistant Professor Raymond LaRaja, Department of Political Science, University of Massachusetts, Amherst (413) 545-6182
Professor Gary L. McDowell, Tyler Hanes Interdisciplinary Professor of Leadership Studies, University of Richmond (804) 287-6085
Professor Emeritus Jerome M. Mileur, Department of Political Science, University of Massachusetts, Amherst (413) 584-3416
Assistant Professor Vincent Moscardelli, Department of Political Science, University of Massachusetts, Amherst (413) 545-0416

Professor M.J. Peterson, Department of Political Science, University of Massachusetts, Amherst (413) 545-6171
Dr. James F. Pontuso, Elliott Professor of Political Science, Hampden-Sydney College, (434) 223-6246
Dean Janet Rifkin, College of Social and Behavioral Sciences, University of Massachusetts, Amherst (413) 545-4173
Richard D. Stritzinger, Executive Director, Great Trails Council #243, Boy Scouts of America (413) 684-3542

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

With the exception of the year that I spent as Deputy Director of the Bureau of Justice Statistics (1984), my entire professional career has been spent in academia as an Assistant or Associate Professor of Political Science specializing in American politics, public policy and public affairs, doing research and teaching undergraduates, Masters in Public Administration students and Doctoral candidates in political science.

In graduate school, sixty percent of my scholarly preparation was in government (political theory, public administration/public policy, and American national institutions) while forty percent was in economics (public finance and history of economic thought). My dissertation research was on law enforcement planning, focusing on the application of various social science methodologies (especially sociological and economic) to the study of crime in the United States. This provided the basis for my book, as well as other publications, and led to my employment at the University of Massachusetts, Amherst where I have taught the Political Economy of Public Policy, Policy Analysis, Policy Evaluation, and Criminal Justice Policy.

Building on this foundation, my research and teaching interests have broadened to include democratization, democratic leadership, and the American Presidency. This has led to a significant amount of State Department-funded work in recent years in public diplomacy abroad. While pursuing these interests, I have maintained a strong interest in the use of social science research both to maintain transparency and to inform citizens and policymakers so as to improve public policies and the capacity for democratic self-government. For example, during my five-year, State Department-funded project with the Uzhgorod State Institute of Information Sciences, Economics and Law (now the Transcarpathian State University), I directed a project meant to strengthen the preparation of future public servants in Ukraine, especially those interested in careers in law enforcement, in the areas of public service ethics, policy analysis, policy evaluation, and democratic leadership.

Given my academic preparation and background, my long interest in the use of social science research better to inform decision making, and my prior experience as Deputy Director for Data Analysis of the Bureau, I believe I am well-qualified for the position of Director of the Bureau of Justice Statistics.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   As a twenty-eight year employee of the Commonwealth of Massachusetts, I am fully vested in the State's public employee defined benefit retirement system. The exact amount of my retirement benefit is calculated based on my age at the time of retirement, my number of years of service to the Commonwealth, and the average of my three highest consecutive years' salary at the time of retirement.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will seek and follow the advice of the Department of Justice Ethics Counsel in the event of a potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   I have no such plans, commitments or agreements.

4. 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, patents, 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 SF278

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   See attached Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   I have never held a position of played a role in a political campaign; my status as a public employee of the Commonwealth of Massachusetts forbids such activity.

III. GENERAL (PUBLIC)

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

   I have devoted substantial time to civic activities and volunteer work in my community in Western Massachusetts. My most extensive commitments have been to Immanuel Lutheran Church (where I was a member from 1979 until 1997 and served three year terms as both President and Financial Secretary of the Congregation) and to the Boy Scouts of America (where I have been an adult member since 1985 and served as Den Father, Assistant Cubmaster, Assistant Scoutmaster, Scoutmaster, District Program Chair, Council Commissioner, Council President, member of the Council Executive Board and Area Vice President). I have also served as a member of my town's Finance Board (by appointment of the Town Meeting Moderator).

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   Great Trails Council #243, Boy Scouts of America; 88 Old Windsor Road; Dalton, MA 01226. Member, 1985 – present/President, 1999 – 2003/Director, 1997 – present. The BSA's traditional uniformed programs, Cub Scouting and Boy Scouting, are open to males aged seven to eighteen; both have parallel programs for females offered by the Girl Scouts of America.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS			LIABILITIES		
Cash on hand and in banks	3492		Notes payable to banks-secured	53947	
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable-add schedule	135620	
Real estate owned-add schedule (personal residence)	407,900		Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	16180				
Cash value-life insurance	35048				
Other assets itemize:					
Individual Retirement Accts	42487				
Tax Sheltered Annuities	91315				
			Total liabilities	189567	
			Net Worth	406855	
Total Assets	596422		Total liabilities and net worth	596422	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	No		Are any assets pledged? (Add schedule)	Residence and one car	
On leases or contracts	No		Are you a defendant in any suits or legal actions?	No	
Legal Claims	No		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	No				

Other special debt	No						

Real Estate Schedule (Residence):

Greenfield Savings Bank
400 Main Street
P.O. Box 1537
Greenfield, MA 01302

Asset Schedule:

Individual Retirement Account:

FBO Jeffrey L. Sedgwick IRA
MML Investors Services, Inc.
1414 Main Street
Springfield, Massachusetts 01144-1013

Tax Sheltered Annuities:

Axa Accumulator Elite
Axa Equitable
P.O. Box 1547
Secaucus, NJ 07096-1547

MassMutual Artistry Annuity
MassMutual Financial Group
Annuity Service Center Hub
P.O. Box 9067
Springfield, MA 01102-9067

MassMutual Odyssey Annuity
MassMutual Financial Group
Annuity Service Center Hub
P.O. Box 9067
Springfield, MA 01102-9067

MassMutual Transitions Annuity
MassMutual Financial Group
Annuity Service Center Hub
P.O. Box 9067
Springfield, MA 01102-9067

NML Tax-Deferred Annuity
Northwestern Mutual Investment Services
P.O. Box 2099
Milwaukee, Wisconsin 53201-2099

U.S. Department of Justice

Washington, D.C. 20530

Marilyn Glynn
General Counsel
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Jeffrey L. Sedgwick, who has been nominated by the President to serve as Director, Bureau of Justice Statistics, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Sedgwick recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute, has a financial interest. Mr. Sedgwick has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Mr. Sedgwick is a tenured professor at the University of Massachusetts, which is part of the Commonwealth of Massachusetts's University of Massachusetts System. During his appointment to the Department of Justice he will be on leave without pay or benefits from the University of Massachusetts. He will not participate personally and substantially in a particular matter that would have a direct and predictable effect on the University of Massachusetts unless he is granted a waiver to participate. In addition, Mr. Sedgwick has agreed that he will not teach or receive compensation as a professor with the University of Massachusetts while serving as Director, Bureau of Justice Statistics.

Mr. Sedgwick has a defined benefit retirement plan from the Commonwealth of Massachusetts. Mr. Sedgwick's continuing interest in this defined benefit plan constitutes a financial interest. There is a regulatory exemption, however, pursuant to 18 U.S.C. § 208(b)(2) found at 5 C.F.R. § 2640.201(c) under which Mr. Sedgwick would be permitted to participate in particular matters of general applicability such as a rule-making that affect all states or local governments, including the Commonwealth of Massachusetts.

We have advised Mr. Sedgwick that because of the standard of conduct on impartiality at 5 CFR § 2635.502, he should seek advice before participating in a particular matter involving specific parties that he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party.

If confirmed, Mr. Sedgwick will resign his positions with the Great Trails Council #243, Boy Scouts of America, Dalton, Massachusetts, and the Association for the Study of Free Institutions and Free Societies, Princeton, New Jersey.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLI FINANCIAL DISCLOSURE REPORT

Form roved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date *(If Applicable) (Month, Day, Year)*

	Last Name	First Name and Middle Initial
Reporting Individual's Name	Sedgwick	Jeffrey L.
Position for Which Filing	Title of Position	Department or Agency *(If Applicable)*
	Director Bureau of Justice Statistics	United States Department of Justice
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*	Telephone No. *(Include Area Code)*
	336 Thompson Hall; 200 Hicks Way Amherst, MA 01003-9277	(413) 545-6189
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held	
	National Board Member: FIPSE; U.S. Department of Education (9/2002 - present) Member; Benjamin Franklin Tercentenary Commission (11/2003 - present)	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Judiciary	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Jeffrey L. Sedgwick	21 October 2005
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
	Jane M. Rodgers	1/31/06
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	R R Cuh	2-1-06
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

Supersedes Prior Editions, Which Cannot Be Used.

278-113

NSN 7540-01-070-8444

SF 278 (Rev. 03/...)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
Jeffrey L. Sedgwick		2

| Assets and Income (BLOCK A) | Valuation of Assets at close of reporting period (BLOCK B) | | | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C) | | | | | | | | | | | | | | |

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Jeffrey L. Sedgwick		3

Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B													BLOCK C																	
														Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Gabelli Value Class B (National Financial Services IRA)		X											X									X									
2 John Hancock Global Leaders Growth Class B (Natl Fin Srv IRA)		X											X									X									
3 Hampshire County Retirement																														Spouse Retirem	Def. Benefit
4 American Century VP Income&Growth (MassMutual Artistry IRA)		X											X								X										
5 MassMutual Life Small Cap Equity (MassMutual Artistry IRA)		X											X							X											
6 Oppenheimer Global Securities (MassMutual Artistry IRA)		X											X								X										
7 Oppenheimer International Growth (MassMutual Artistry IRA)		X											X								X										
8 T.Rowe Price Mid Cap Growth (MassMutual Artistry IRA)		X											X								X										
9 MassMutual Odyssey Annuity			X															X				X									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Jeffrey L. Sedgwick		4

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																		
																	Type				Amount														
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	AIM V.I. Global Health Care (MassMutual Transitions Annuity)		X											X								X											
2	AIM V.I. Technology (MassMutual Transitions Annuity)		X											X							X												
3	MassMutualLife Emerging Growth (MassMutual Transitions Annuity)																					X											
4	Russell Real Estate Securities (Northwestern Mutual Life IRA)			X										X									X										
5	Commonwealth of Massachusetts State Employees' Retirement																														Value unascert	See Sch C, Pt II
6	University of Massachusetts, Amherst; Amherst, MA 01003																														Salary $182139	
7	Amherst Regional School System; Amherst, MA 01002																														Spouse Employm	
8	Artisan Gallery; Northampton, MA 01002																														Spouse Employm	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Jeffrey L. Sedgwick		5

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
Jeffrey L. Sedgwick		6

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)										
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Leave w/o pay with termination of benefits (with reinstatement upon return)	University of Massachusetts, Amherst	1/2006
2	Commonwealth of Massachusetts State Employees' Retirement (Defined Benefit plan.	Commonwealth of Massachusetts	9/1978
3	Estimated $4891 per month at retirement)		
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Jeffrey L. Sedgwick		7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Great Trails Council #243; Boy Scouts of America; Dalton, MA 01226**	Non-profit youth service	Director	9/85	Present
2	Association for the Study of Free Institutions and Free Societies; Princeton, NJ 08542**	Non-profit education	President/Director	9/2004	Present
3	University of Massachusetts, Amherst	Public Higher Education	Tenured Assoc. Professor	9/1978	Present
4	[**Will resign position upon confirmation]				
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	University of Massachusetts, Amherst; Amherst, MA	Tenured Associate Professor of Political Science
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

Senator HATCH. Ms. Freeman, as you have traveled the country during your first term as Director of Community Relations Service, the CRS, you probably encountered a lot of people who are not familiar with CRS, its history or its mission. Could you explain to the Committee the mission and purpose of the Community Relations Service?

STATEMENT OF SHAREE M. FREEMAN, NOMINEE TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE

Ms. FREEMAN. Very simply put, sir, the Community Relations Service is responsible for resolving conflicts based on race, color, and national origin throughout the country. We are Federal mediators. My staff mediate disputes based on race, color, and national origin.

Senator HATCH. That is great.

[The biographical information of Ms. Freeman follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Sharee Michele Freeman, Sharee Freeman Abdessamad, Sara-Lee, Sha, Cher

2. Address: List current place of residence and office address(es.)

Place of Residence:
Arlington, Va. 22207

Office Address:
Community Relations Service
U.S. Department of Justice
600 E Street, N.W. Suite 6000
Washington, D.C. 20005
202-305-2930

3. Date and place of birth.

3/3/55; New York, New York

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorced

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted

8/77 to 5/80 Georgetown University Law Center - J.D. received May 1980

10/76 to 3/77 Adelphi University - Paralegal Certificate received March 1977

9/72 to 5/76 St. Lawrence University - B.A. Government/Sociology received May 1976

Fall 1975 American University attended the Washington Urban Semester

6/77 to 8/77 Notre Dame Law School - Council on Legal Education Summer Seminar

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

10/76 to 3/77 Sales Clerk, Abraham and Straus Department Store, Manhasset, New York

1/77 to 3/77 Circulation Clerk, Gralla Publications, 1515 Broadway, New York, New York

3/77 to 6/77 Sales Clerk, Abraham and Straus, 100 Paramus Park, New Jersey

3/77 to 6/77 Executive Secretary, IBM Parson Pond Drive, Franklin Lakes, New Jersey

6/78 to 4/79 Legal Clerk, Indian Law Reporter, American Indian Legal Training Program, Washington, D.C.

6/78 to 9/79 Concierge, Hyatt Regency Hotel, Washington, D.C.

2/79 to 9/79 Writer, A.L. Nellums, Washington, D.C.

Summer 1979 Summer Law Clerk, U.S. Attorney's Office, Washington, D.C. Federal District Court Division

8/80 to 8/81 Law Clerk for Judge Norma Holloway Johnson in the U.S. District Court for the District of Columbia

8/81 to 12/ 81 Research Assistant, Hamilton, Rabinovitz and Szanton (ENDISPUTE)Washington, D.C.

3/82 to 4/84 Assistant District Attorney, Philadelphia District Attorney's Office, Philadelphia, Pa.

8/91 to 12/92 Cosmetic Salesperson, Nu Skin Independent Distributor, Utah based company, part-time.

4/84 to 7/97 Acting Assistant Solicitor and Attorney /Advisor, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C.

7/97 to 3/01 Full Committee Counsel, Judiciary Committee, U.S. House of Representatives Washington, D.C.

1998 to 12/01 Counsel and Judiciary Committee Legislative Assistant, Office of Congressman Henry Hyde, U.S. House of Representatives, Washington, D.C.

3/01 to 12/01 Counsel, International Relations Committee, Washington, D.C.

12/01 to 11/05 Director, Community Relations Service, U.S. Department of Justice, Washington, D.C.

6/03 to present Trustee, St. Lawrence University, Canton, New York.

11/05 Counselor to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C.

12/05 to present Acting Director, Community Relations Service, U.S. Department of Justice, Washington, D.C.

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Presidential Scholar 1972; St. Lawrence University Scholarship; Georgetown University Scholarship; Inger Jo Hansen Award for Leadership and Community Service 1975; Department of Interior Star Award 1996; Department of Interior Incentive Awards 1994, 1995; Department of Interior Diversity Council Award, 1994; White House and Department of Interior Point of Light Volunteer Award, 1990; Department of Interior Sustained Performance Award, 1987. National Organization of Black Law Enforcement Officials Association, (NOBLE) Robert Lamb Humanitarian Award 2005; International Association of Chiefs of Police (IACP) Special Recognition Award 2005

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

District of Columbia Bar Association Member - 1988 to present
State of Pennsylvania Bar Association Member - 1981, inactive
National Bar Association, Greater Washington Area Chapter Women Lawyers Division - Member 1999-2001
National Republican Lawyers Committee Member 1999-2000
American Bar Association - Conflict Resolution Section Member

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations Lobbying Before Public Bodies:

District of Columbia Bar Association
State of Pennsylvania Bar Association

Other Organizations:
Arlington Republican Women's Club, member 2000-2001
Arlington County Republican Committee - Marshall Precinct Captain 2000-2001
St. Augustine Church, Member
National Republican Lawyer's Association, Member, 1999-2001
D.C. Public Schools Mentors, Inc., Member, 1987-1994
St. Lawrence University Board of Trustees, Trustee
International Association of Chiefs of Police - Civil Rights Committee, Member
National Organization of Black Law Enforcement Executives, Member
Association for Conflict Resolution, Member
The S.B. Step Ahead Program, Inc., Member

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Pennsylvania Supreme Court - 1981, inactive because I made a decision to pay Bar dues to DC only.
District of Columbia Bar Association - 1988
U.S. District Court, Eastern District of Pennsylvania - 1984

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all

published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Attached are speeches that, for the most part, present the CRS mission to various audiences.
Attached are Community Relations Service (CRS) Annual Reports that I reviewed for Fiscal Years 2001, 2002, 2003, 2004.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good Health Last exam - June 2005.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

3/82 to 4/84 Assistant District Attorney
Philadelphia District Attorney's Office
Philadelphia, PA 19107-3499
Appointed

4/84 to 7/97 Acting Assistant Solicitor and Attorney Advisor
Office of the Solicitor
U.S. Department of the Interior
Washington, D.C.
Excepted Service

12/01 to 11/05 Director
Community Relations Service
U.S. Department of Justice
Washington, D.C.
Appointed

11/05 to 12/05 Counselor to the Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C.
Appointed

12/05 to present Acting Director
Community Relations Service
U.S. Department of Justice
Washington, D.C.
Appointed

15. Legal Career:

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

1. 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;

8/80 to 8/81 Law Clerk for Judge Norma Holloway Johnson in the U.S. District Court for the District of Columbia

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

I have never practiced alone.

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

3/82 to 4/84 Assistant District Attorney
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499

4/84 to 7/97 Acting Assistant Solicitor and Attorney Advisor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C.20240

7/97 to 3/01 Full Committee Counsel
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C.20515

1998 to 12/01 Counsel and Judiciary Committee Legislative Assistant
Office of Congressman Henry Hyde
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515

3/01 to 12/01 Counsel
International Relations Committee
U.S. House of Representatives
2170 Rayburn House Office Building
Washington, D.C. 20515

12/01 to 11/05 Director
Community Relations Service
U.S. Department of Justice
600 E Street N.W. Suite 6000
Washington, D.C. 20005

6/03 to present Trustee
St. Lawrence University
23 Romoda Drive
Canton, New York. 13617

11/05 to 12/05 Counselor to the Assistant Attorney General,
Civil Rights Division
U.S. Department of Justice
Washington, D.C.

12/05 to present Acting Director
Community Relations Service
U.S. Department of Justice
600 E Street, N.W., Suite 6000
Washington, D.C.20005

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1980-1981 Federal District Court Clerkship - performed legal research and writing related to federal, state, civil and criminal law, preparing brief synopsis of cases scheduled for oral argument, assisting in the preparation of judicial opinions, reading and summarizing slip opinions of the Supreme Court and D.C. courts, answering telephone inquires and correspondence from counsel, parties, press, and other judicial officers of the court, coordinating courtroom calendar, organizing and maintaining chamber's library, supervising part-time interns.

1982-1984 Criminal law trial work.

1984-1997 Civil Law - Federal trial work, administrative appeals and hearings, writing advisor opinions and decisions for cabinet and sub-cabinet level officials, reviewing and drafting federal regulations, speaking at training sessions for Department bureaus and self-governance tribes. Concentration in Indian law, education law, tribal government contracting, special education, social services, federal property management, housing, road construction, debt collection, FOIA, facilities construction, building safety - OSHA, civil rights, appropriations law, ADA.

1997-2001 - Constitutional law, civil rights, fair housing, Voting Rights Act, criminal law, health law, as House Judiciary Full Committee Counsel.

2001 Intellectual property, internet, courts, immigration, constitutional law, criminal law, administrative law, copyright, trademark, patents, commercial law, human rights as Judiciary Legislative Assistant for Representative Henry Hyde.

2001-present - Civil rights, as Director/Acting Director of the Community Relations Service

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Victims of crime, Agency cabinet and sub-cabinet level officials, members of both Houses of Congress, tribal, state and local officials, community leaders, local and federal law enforcement officials, college and university staff. Specialization: Indian law and criminal law.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:

(a) federal court;
(b) state courts of record;
©) other courts.

3. What percentage of your litigation was:

(a) civil:
(b) criminal.

Philadelphia, Pennsylvania District Attorney's Office - appearance in State Criminal Court frequently - 100%

U.S. Department of the Interior, Solicitor's Office - Appearances in civil Federal courts 25% and Administrative Hearings 75%. During the early years of my tenure at DOI there were more cases in Federal court on temporary restraining orders than in the later years. The last two years the majority of my work was related to negotiated rule making activities and my administrative and Federal caseload had decreased. In the last two years at DOI, I supervised four attorneys who had active caseloads in federal court and were handling administrative appeals and hearings.

U.S. House of Representatives - one Federal court civil action.

The Community Relations Service function is to mediate community disputes. There are no opportunities to appear in court.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

State Criminal Court cases - Sole counsel, Number of cases - several thousand or more as an Assistant District Attorney.

Federal Court - Co-Counsel/ Associate Counsel/ Agency Counsel number of Cases - Approximately 40

Administrative Appeals and Hearing - Sole Counsel, Number of Cases more than 50 in a 13 year period

Managed 37 federal mediators who mediate approximately 600 cases per year.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

100% of these trials are all non-jury trials.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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. Flandreau Indian School Board v. Clark - Civil 84-4152, Civil Motion for Summary Judgement and Trial in Sioux Falls, South Dakota.

Summary of the Case: This case was filed by plaintiff school board requesting injunctive relief challenging the defendant Bureau of Indian Affairs (BIA) Education office's selection of a school superintendent. The local school board wanted to be consulted prior to the federal selection. The BIA took the position that consultation with the local school board for an employment decision was not required. The court, after hearing a motion for summary judgement and trial, found in favor of the BIA.

Date of Representation: 1984

Judge Jones, U.S. District Court for the District of South Dakota

Counsel for the Defendant: Represented the United States
I served as Agency Co-Counsel and participated in the examination of witnesses and opening statement.
Phil Hogan was the U.S. Attorney
Bonnie Ulrich was lead counsel
Assistant United States Attorney
United States Attorney's Office
P.O. Box 5073
Sioux Fall, South Dakota 57117-5073
605-330-4400

Counsel for the Plaintiffs/Opposing Counsel: Represented the local Indian School Board at

the Flandreau School

Native American Rights Fund
Robert Anderson
University of Washington at Seattle
206-685-2861
Anita Remoroski is possibly not practicing law, she attended medical school and might be a medical doctor) who may be contacted through Terry Perchote 605-341-4400

2. Eastern Band of Cherokee Indians v. U.S. 16 Cl.Ct.75 (1988). United States Claims Court.

Summary of the Case: This case involved an allegation that the U.S. Department of Interior (DOI) should have provided increased funds to the Cherokee Central School under 25 U.S. C. 2008(b) to make the school funding equivalent to what the local public schools in the State of North Carolina were receiving. DOI took the position that comparisons between the local public schools and a BIA school for funding would yield a fair result given the various different funding sources and components that support a BIA school. The court entered an order for summary judgment in favor of the Department.

Date of Representation: 1988
Judge Wilkes C. Robinson, U.S. Claims Court

Counsel for the Defendant: Represented the United States
I served as Agency Counsel (Of Counsel)
George William Sherk was the lead counsel
U.S. Department of Justice
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-001
202-514-2000

Mr. Sherk has left the Department and is not listed in Martindale and Hubbell.

Counsel for the Plaintiff/Opposing Counsel: Represented the Eastern Band of Cherokee Indians
Ben Oshel Bridges
21 Colonial Square
Sylva, North Carolina
828-586-3131 or Eastern Band of Cherokee Indians 828-497-2771

3. Meyers v. San Juan School District, 93-C-1080-J 905 F. Supp 1544 (1995) United States District Court for the District of Utah

Summary of the Case: This case involved an allegation by the U.S. Department of Justice Civil Rights Division and the plaintiffs, parents of Navajo Indian students, that the San Juan County School District was discriminating against these Navajo students in the Utah portion of the state by not providing adequate high school educational facilities. The Bureau of Indian Affairs was operating an elementary school at Navajo Mountain. The State of Utah wanted to house a temporary state-funded school in shared facilities with the BIA until a new state-funded and operated high school facility could be built. The case was settled after I convened a mediation session at the Navajo Mountain School with all parties present. Shared facilities were permitted under a use agreement until the state of Utah completed building a high school for the Navajo Mountain community.

Date of Representation: 1995

Judge Bruce Jenkins, U.S. District Court for the District of Utah.

Counsel for the Bureau of Indian Affairs/ Neutral:
I served as Agency Counsel with Tom O'Hare
Retired from Office of the Regional Solicitor
Building 1, Suite 200
Albuquerque, New Mexico
505-346-2700

Lawrence Baca was lead counsel for the Justice Department.
U.S. Department of Justice
Civil Rights Division
P.O. Box 65958
Washington, D.C. 20035
202-514-3874

Eric Swenson
Attorney for the Plaintiffs
P.O. Box 5798
Salt Lake City, Utah 84158
801-521-5674

Frank Seanez
Navajo Nation Department of Justice
Window Rock, Arizona 86515
520-871-7166
520-871-7803

Counsel for Defendants/Opposing Counsel: Brinton R. Burbidge
Burbidge, Carnahan, Ostler and White
Key Bank Towers, 50 South Main Street, Suite 1400
Salt Lake City, Utah 84144
801-263-5300

Randy Austin
Kirton and McConkie
60 East South Temple #1800
Salt Lake City, Utah 84144
801-328-3600

John McAllister,
Assistant Attorney General
State of Utah
Attorney General's Office
P.O. Box 140583
State Capitol Building, Suite 236
Salt Lake City, Utah 84111

4. Vigil v. Rhoades, 746 F. Supp. 1471 (1990); Vigil v. Rhoades, 953 F. 2d 1225 (1992); Lincoln v. Vigil, 508 U.S. 182 (1993).

Summary of the Case: In this case, Plaintiffs alleged that the Indian Health Service's (IHS) and BIA's alleged termination of a pilot program called the Indian Children's Program was procedurally invalid. This case was appealed to the Supreme Court of the United States as Lincoln v. Vigil. The case was resolved in favor of DOI and HHS. DOI took the position that it never stopped providing BIA special education service even though the program with IHS participation was no longer operating.

Date of Representation: 1986 to 1997

Judge Juan G. Burciaga, U.S. District Court for the District of New Mexico
Judges Seymour, Barrett and Baldock, Tenth Circuit
Supreme Court of the United States

Counsel For the Defendants:

I served as Agency Counsel for DOI.

Duke McCloud served as Agency Counsel for HHS.
General Counsel's Office
HHS-Indian Health Service
5600 Fisher's Lane
Rockville, Maryland 20857
301-443-8220

Ray Hamilton was lead counsel
Assistant United Stated Attorney
United States Attorney's Office
201 3rd Street, N.W. Suite 900
Albuquerque, New Mexico 87102
505-346-7274

DOJ Appellate Lawyers:

Ed Kneedler
Deputy Solicitor General
Solicitor General's Office
U.S. Department of Justice. Room 5266
Washington, D.C. 20530
202-514-3261

Andrew Mergen
Appellate Division
U.S. Department of Justice
P.O. Box 23795
L'Enfant Plaza Station
Washington, D.C. 20026
202-514-2813

Counsel for the Plaintiff/Opposing Counsel:
Joel Jaspere
Northern New Mexico Legal Service
P.O. Box 1475
Gallup, New Mexico 87305
505-722-4417

5. Sanostee v. Hodel, Case No. 84-1033

Summary of the case: This case involved a challenge by the Navajo Nation to overturn a BIA decision to close down the Sanostee School because the school facilities were unsafe. This case was heard on a request for a temporary restraining order. The court denied the order and ruled in favor of the agency.

Date of Representation: 1984

Judge Bobby Baldock, U.S. District Court for the District of New Mexico

Counsel for the Defendant:

I served as Agency Counsel.

Ray Hamilton was the lead counsel.
Assistant United States Attorney
United States Attorney's Office
201 3rd Street, N.W. Suite 900
Albuquerque, New Mexico 77102
505-346-7274

Counsel for the Plaintiff/Opposing Counsel:
Dan Rosenfelt
1805 Carlisle N.E.
Albuquerque, New Mexico 87110
505-266-3441

6. Navajo Nation v. Hodel, 645 F. Supp. 825 (1986) U.S. District Court for the District of Arizona

Summary of the Case: I handled the administrative appeal for this case and was also responsible as agency counsel for the federal court action. I argued a motion for summary judgment in this case and handled some of the depositions in this case. In this action, the Navajo Nation challenged the denial by the Department of Interior and administrative findings upholding the denial of their Indian Child Welfare Act Grant funds. The Court granted the Tribe's motion in part and denied their motion in part.

Date of Representation: 1986

Judge Rosenblatt U. S. District Court for the District of Arizona.

Counsel for the Defendant:

Michael Arkfeld was the lead attorney
Assistant United States Attorney (AUSA)
U.S. Attorney's Office
40 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004
602-514-7739

At the very beginning of the case, the AUSA was Paul Corradini.

Counsel for the Plaintiff/Opposing Counsel:

Craig Dorsey, Esq.
2121 Southwest Broadway, Suite 100
Portland, Oregon 97201
503-790-9060

Kate Hoover
Assistant Attorney General
Navajo Nation (Tohono O'odham)
Sells, Arizona
602-383-3410

7. Sisco v. Clark, Civ. No. 84-711 C U. S. District Court for the District of Columbia and U.S. District Court for the Eastern District of Oklahoma.

Summary of the Case: This was filed as a temporary restraining ordered class action case against the Department of the Interior challenging the decision of the Cherokee Nation to prevent students who enrolled at the Flaming Rainbow University from receiving higher education tribal contracted funds. The Tribe took the position that the University was not a suitable educational institution for its tribal members. The government filed and successfully argued a motion to transfer the action to Oklahoma. The case was transferred to Muskogee, Oklahoma, so that the tribe could join the case. The Tribe intervened in 1985 and the case was settled.

Date of Representation: 1984 and 1985

Judge Hogan, U.S. District Court for the District of Columbia.
Judge H. Dale Cook, U.S. District Court for the Eastern District of Oklahoma

Counsel for the Defendants:

I served as Agency Counsel.

Alan Brenner
Environmental and Natural Resources Division
U.S. Department of Justice
Washington, D.C.
202-305-0466

Roger Hilfiger
United States Attorney
U.S. Attorney Office
620 West Broadway
Muskogee, Oklahoma
918-683-4445

Andy Wilcoxsen, Sr. And Jim Wilcoxsen
represented the Cherokee Nation
Wilcoxsen and Wilcoxsen
112 North 5th Street
Muskogee, Oklahoma
918-683-6696

Counsel for the Plaintiffs/Opposing Counsel:
Jonathan Hill
Dow, Lohnes and Albertson
1200 New Hampshire Avenue, N.W. Suite 800
Washington, D.C. 20036
202-776-2000

Mike Goldstein
Dow, Lohnes and Albertson
1200 New Hampshire Avenue, N.W. Suite 800
Washington, D.C. 20036
202-776-2000

James Mc Elfish
Environmental Law Institute
1616 P Street, N.W.
Washington, D.C. 20036
202-939-3800

Julian Fite
Robinson, Locke and Gage
now with the Cherokee Nation
Law and Justice Division
P.O. 948
Talequah, Oklahoma 74465
918-456-0671

8. Malone v. BIA, 38 F. 3d 433 (1994) U.S. District Court for the Eastern District of California

Summary of the Case: The Malone case involved a challenge by two Wintu Indian

brothers who were members of a non-federally recognized tribe. The brothers sought higher education scholarship funding from the BIA. The Court ruled in favor of the BIA. An appeal was filed and the court ruled in favor of the plaintiffs.

Date of Representation: 1994

Judge Garcia, U.S. District Court for the Eastern District of California

Counsel for the Defendants:

I served as Agency Counsel on this case.

Debora (Van De Weijde) Luther was the lead.
Assistant United States Attorney
U.S. Attorney's Office
501 I Street, Suite 10-100
Sacramento, California 95814
916-554-2720

Counsel for the Plaintiffs/Opposing Counsel:
Steve Quesenberry
California Indian Legal Services
510 16 th Street, 4th Floor
Oakland, California 94612
510-835-0284

David Rapport
Rapport and Marstson
P.O. Box 488
Ukiah, California 95482
707-462-6846

9. Sisseton-Wahpeton Sioux Tribe v. Lujan, 95-35135, 90 F. Ed 351 (1996) United States Circuit Court for the Ninth Circuit.

Summary of the Case: This case was argued in 1996 before the Ninth Circuit, where the court ruled in favor of the agency. The Agency Defendants, Bruce Babbitt, Secretary of the Interior, and Robert Rubin, Secretary of the Treasury, moved to dismiss this case on the grounds that it was barred by the doctrines of res judicata and collateral estoppel and, alternatively, by the statute of limitation. This action challenged the validity of the Act of October 25, 1972, 28 U.S.C. 1300d, et seq. ("the 1972 Act"), implemented to distribute sums of money appropriated by Congress to satisfy a final judgment entered by the Indian Claims Commission ("ICC"). The tribes filed suit contending Congress should not have allocated 25% of an ICC judgment fund to nonmember lineal descendants of the aggrieved aboriginal tribe, which had dispersed in the 1860's.

Date of Representation: 1996

Judges Browning, Wright, Nelson, Ninth Circuit

Counsel for the Defendants:

I was Agency Counsel on this case, having inherited the case from Duard Barnes, who had retired.

Tony Rodgers was lead counsel.
Environmental and Natural Resources Division
U.S. Department of Justice
Washington, D.C.
202-514-5271

Tamara N. Rountree was lead appellate counsel.
Appellate Section, Environmental and Natural Resources Division
U. S. Department of Justice
Washington, D.C.
202-514-1174

Counsel for Plaintiffs/Opposing Counsel:

Bertram E. Hirsch
81-33 - 258th Street
Floral Park, New York 11004
718-347-3022

10. Bay Mills Indian Community v. Brown, Civ. No. 92-1247
U.S. District Court for the District of Columbia

Summary of the Case: The Bay Mills Indian Tribe challenged a regulation which set the starting date for a Bureau of Indian Affairs General Assistance Program in the State of Michigan. The BIA took the position that the start date for the general assistance program would be October 1, 1992, the beginning of the 1993 fiscal year. The Tribe took the position that the BIA was required to start a general assistance program immediately and sought emergency injunctive relief. The Court ruled in favor of the BIA.

Date of Representation: 1992

Judge Thomas Penfield Jackson

Counsel for the Defendant:

I served as Agency Counsel.

Edward J. Passarelli was lead counsel.
U.S. Department of Justice
Environmental and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044
202-305-0468

Plaintiffs Counsel/Opposing Counsel:
Phil Baker-Shenk, Esq.
Dorsey and Whitney
1001 Pennsylvania Avenue, N.W. Suite 300 South
Washington, D.C. 20004
202-824-8824

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I participated, as one of two agency counsels, in Negotiated Rulemaking for the Self-Government Tribes - 25 Code of Federal Regulations.

I developed and implemented the New Attorney Orientation Program at the U.S. Department of the Interior.

As a member of the U.S. Department of the Interior Diversity Council, I participated when the Council recommended the implementation of a Department-wide training program for managers on diversity issues.

I was responsible for all preparations related to two House Committee on the Judiciary Full Committee hate crimes hearings on August 4, 1999 and July 22, 1998.

Under my supervision at the Community Relations Service, with the assistance of Connecting Cultures, Inc., a cultural competency Arab, Muslim law enforcement police roll call CD was developed, vetted with all the major police organizations, and distributed throughout the country. The CD was so successful the U.S. Department of Homeland Security reissued it and now uses it to train all of its law enforcement agencies.

With the assistance of staff, some of the accomplishments at the Community Relations Service during my tenure as Director, include but are not limited to:

A New Racial Profiling curriculum will be seen by both the police and community alleging bias based policing to achieve better communications and to allow them to see the

same picture when a car stop or street stop occurs.

A New Case Management System was developed to streamline CRS work, to track case progress, ensure that the case work meets jurisdictional standards, and provide supervisory feedback to regional and field staff.

CRS Staff was exposed to state and court certification requirements for mediators to allow CRS mediators to garner certification and maintain it, to network with local and community based mediators, to support new mediation theories and provide growth for CRS mediators in the mediation profession.

CRS regional library resource centers were created to provide CRS mediators with the latest professional materials in their profession.

The use of a "City Spirit Facilitation Model was implemented.

"City-SPIRIT" is an innovative program created by CRS staff that recognizes the value of full community participation in solving racial conflict. City-SPIRIT brings together citizens, civic leaders, local government officials, health officials, education officials, law enforcement officials, local media, and business leaders, who form a cadre of concerned citizens from all levels and backgrounds of society. As part of the program, CRS staff facilitate discussions to assist community members as they identify problems and solutions to race-based concerns in the city. It is an inclusive and participatory effort to improve race relations community-wide.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

UBS/Paine Webber IRA $12,000 approximately
U.S. Government Retirement Thrift Savings Plan - $ 160,000 approximately

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would consult with the U.S. Department of Justice Ethics officer in the event of a potential conflict of interest.

Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

3. 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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Form

4. Please complete the attached financial net worth statement in detail (add schedules as called for).

See Net Worth Statement

5. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Bush for President - Republican National Committee - Co-Chairmans' Office, Director of African American Affairs - Volunteer 2000
Rick Lazio/Joan Johnson Campaign Volunteer 2000
Republican Platform Committee 2000 Volunteer Staff
Selected for Mark Earley for Governor Delegate VA Primary in 2001
Bush/Allen/Miller Campaign Volunteer 2000

III. GENERAL (PUBLIC)

1. 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 participate with the S.B. Step Ahead Program which implements programs for the Homeless and the collection of books, old computer equipment, clothing, sewing machines and bedding to be shipped and delivered to the poor in South Africa.

Every year, I participate in the Harry A. Blackmun program for a group of young, diverse, inner city teens who work in a summer program that gives them an opportunity to explore a career in the legal profession.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in bank	$ 247,440			Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable-add schedule National City Mortgage	$310,260		
Real estate owned-add schedule 650,000 Home and 26acres of vacant land in PA 250,000	$900,000			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	$34,000						
Cash value-life insurance	0						
Other assets itemize:							
UBS, Paine Webber IRA	$12,000						
Thrift Savings .	$160,000						
				Total liabilities	$310,260		
				Net Worth $	1,043,180		
Total Assets $ 1,	353,440			Total liabilities and net worth $ 1,	353,440		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	No			Are any assets pledged? (Add schedule)	No		
On leases or contracts	No			Are you a defendant in any suits or legal actions?	No		
Legal Claims	No			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	No						
Other special debt	No						

U.S. Department of Justice

Washington, D.C. 20530

DEC 27 2005

Ms. Marilyn Glynn
General Counsel
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Ms. Sharee Freeman, who has been nominated by the President to serve as Director, Community Relations Service, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Ms. Freeman recuse herself from participating personally and substantially in a particular matter in which she, or anyone whose interests are imputed to her under the statute, has a financial interest. Because Ms. Freeman is currently a trustee at St. Lawrence University, St. Lawrence's interests are imputed to her. Ms. Freeman has been counseled and agrees that she will not participate personally and substantially in a particular matter that would have a direct and predictable effect on the financial interests of St. Lawrence unless she obtains a written waiver or qualifies for a regulatory exemption. Ms. Freeman also understands that as a trustee for St. Lawrence, she may not identify potential contributors to or solicit funds for the University. Ms. Freeman has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests.

We also have advised Ms. Freeman that because of the standard of conduct on impartiality at 5 CFR 2635.502, she should seek advice before participating in a particular matter involving specific parties that she knows is likely to have a direct and predictable effect on the financial interest of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year)

	Last Name	First Name and Middle Initial
Reporting Individual's Name	FREEMAN	SHAREE M.
Position for Which Filing	Title of Position: DIRECTOR - COMMUNITY RELATIONS SERVICE	Department or Agency (If Applicable): DOJ
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): 600 E STREET, N.W. #6000 WASHINGTON, D.C.	Telephone No. (Include Area Code): 202-305-2930
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Sharee M Freeman	11/14/05
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
	Jack M. [illegible]	12/22/05
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)	[illegible]	12-23-05
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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Reporting Individual's Name	SCHEDULE A	Page Number
FREEMAN		2 of 5

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x																
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x									x										
	IRA: Heartland 500 Index Fund							x						x										x									
1	PHILA. FEDERAL CREDIT UNION		X																X			X										
2	CONGRESSIONAL CREDIT UNION					X													X			X										
3	PAINE WEBBER IRA MONEY FUNDS (cash portfolio)		X																X			X										
4	MT. BETHEL, PA 26 ACRES OF VACANT LAND					X															X												
5																																	
6																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: FREEMAN

SCHEDULE B

Page Number 3 of 5

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
1 FREEMAN		4 of 5

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [X]

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x) $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [X]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	ST. LAWRENCE UNIVERSITY CANTON, NY	NON PROFIT EDUCATION	TRUSTEE	9/03	present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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555

Senator HATCH. Well, let me tell you, I have read extensively about each of you. I have great confidence in each of you for the respective positions to which you have been nominated. And I am just happy that we have had this hearing finally for you and that we can push you forward and hopefully get this done.

I am going to keep the record open for 1 week for written questions, and we will close that record on March 21st at 5 p.m.

Now, there are two letters that we have to enter into the record: Congressman David Dreier has submitted a letter, and Wade Henderson of the Leadership Conference on Civil Rights. We are very familiar with both of them. They are both good people, and, frankly, we are very pleased to support your nominations. I did not want you to have to sit around here until 4:30 or 5 o'clock, so I scooted over from the Senate. We are having a series of 10-minute votes right now, and I got over here so that we could end this hearing and push your nominations forward. And we will do everything we can to get them through, OK?

Mr. CHAGARES. Thank you, Mr. Chairman.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. SEDGWICK. Thank you, Mr. Chairman.

Ms. FREEMAN. Thank you, Mr. Chairman.

Senator HATCH. Well, thank you so much.

With that, we will recess this Committee until further notice. We will enjoy supporting you.

[Whereupon, at 3:50 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses to Questions for Jeffrey Sedgwick from Senator Leahy

1. The National Research Council's Committee on National Statistics publishes "Principles and Practices for Federal Statistical Agencies." One of the principles is credibility. The Committee found that for an agency to have credibility, it "must be and must be perceived to be free of political interference and policy advocacy." One of the practices recommended in this document is that statistical agencies have a strong position of independence to ensure their credibility. Do you agree with this principal?

Response: I agree.

2. How would you protect the independence of the Bureau of Justice Statistics (BJS)?

Response: If confirmed, I will abide rigorously by relevant Congressional authorizations as well as with non-legislative directives, regulations, standards and requirements (including those of the Office of Federal Statistical Policy and Standards, the Federal Committee on Statistical Methodology, the aforementioned "Principles and Practices for Federal Statistical Agencies" of the National Research Council's Committee on National Statistics, and the Department of Justice Advisory Board on Research and Statistics).

3. The Committee also noted that: "It is essential that a statistical agency strive to maintain credibility for itself and for its data. Few data users are in a position to verify the completeness and accuracy of statistical information; they must rely on an agency's reputation as a credible source of accurate and useful statistics." Do you agree with that statement?

Response: I agree.

4. Further more, the Committee noted: "To have credibility, an agency must be and must be perceived to be free of political interference and policy advocacy." Do you agree with that position?

Response: I do.

5. If the Attorney General decides that you should not publish a particular finding or statistic, what would you do?

Response: Congressional authorization gives the Bureau complete control over its statistical publications, their content and the timing of their release. I would insist on that degree of independence to preserve the impartiality and professional credibility of BJS data.

6. The Government Accountability Office is currently investigating the dissemination practices among the Federal statistical agencies. This investigation was prompted by the concern that the Census Bureau held up the release of the annual poverty numbers until after the 2004 election, although the Bureau usually releases those numbers in the summer. If the Department of Justice decided to delay a report's release what would you do?

Response: As stated in the previous answer, the timing of release of statistical studies falls under BJS authority.

7. What steps could you take to protect the scheduling of releases?

Response: If confirmed, I will consult widely with stakeholders in BJS data to develop and maintain a comprehensive calendar of statistical reports and releases designed to put accurate and credible information into the hands of data users in a timely manner.

8. What would you do to insure the integrity of the BJS news releases as well as its reports?

Response: The principle governing news releases must be that they direct the reader, viewer or listener to the report and its findings. The news release should not supplant the report as the focus of news coverage, nor should the news release mischaracterize the report.

9. The Attorney General currently requires that the BJS Director provide the Office of the Attorney General with a notification of intent to publish 30 days before release. This has not always been the procedure. Do you agree with it?

Response: Yes, I agree that some degree of pre-publication notice is appropriate to facilitate intra-agency coordination so long as it does not impair the statistical validity of a study.

10. A copy of each report is provided with this notification. What would you do to prevent recipients of the notification from using or releasing the findings from the report?

Response: Each report provided with notification of intent to publish must clearly be identified as a draft not for dissemination or quotation without the prior approval of the Director of the Bureau of Justice Statistics; if confirmed as Director, I will not, as a matter of principle, give such approval to anyone prior to public release of the report by the Bureau.

11. What would you do if someone released findings before their official release?

Response: If confirmed as Director of the Bureau of Justice Statistics, I would decline as a matter of principle to vouch for the accuracy or credibility of any data released by other than the Bureau of Justice Statistics.

12. How would you ensure a wide dissemination of data and equitable access to the data?

Response: If confirmed as Director, I will consult broadly with all stakeholders in BJS data to identify opportunities to enhance timely and equitable dissemination of BJS data, to provide better for the equal protection of all Americans from threats to their personal safety and security.

13. How would you ensure the quality of the data produced by BJS? Is there anything about the BJS data quality guidelines that you would change?

Response: I am very impressed with the existing data quality guidelines; at the same time, it is important constantly to review and update these guidelines, in consultation with Bureau stakeholders, as the Bureau addresses new and emerging threats to public safety and security.

14. The Office of Management and Budget regulates the release of the major economic indicators through Directive 3. Do you think there should be something similar for other statistical data?

Response: I believe that is an option worth investigating.

15. The data from the Bureau of Justice Statistics are the official statistics of the United States. Do you think that the statistical functions of BJS are inherently governmental?

Response: If confirmed as Director of the Bureau of Justice Statistics, I would be happy to look more deeply into this important question as it pertains to the collection, analysis and dissemination of civil and criminal justice data.

16. What would you do if the Attorney General demanded that a political comment be written into a BJS news release before the release could be approved and disseminated?

Response: The credibility of BJS data depends on its being free from political comment or commentary.

17. Most statistical dissemination is now done on the Internet. How will you ensure that users of the BJS site are aware of the BJS data quality guidelines?

Response: BJS Data Quality Guidelines, as well as BJS Statistical Policy and Practices, are currently posted and easily available to consumers of BJS data and reports on the homepage of the Bureau's website.

18. How will you ensure that Internet users can easily find and use the statistics on the BJS website?

Response: If confirmed as Director, I will consult with experts in the field of web design, as well as stakeholders in BJS data, to ensure that the Bureau remains in the forefront of organizations visually presenting quantitative data on complex social phenomena in an accurate, credible and timely manner.

19. What additional plans do you have for dissemination of BJS statistics?

Response: As an academic for the past twenty-eight years, I am well aware of both the

rapidly changing field of information technology and the increasing extent to which program development is data driven. If confirmed as Director of the Bureau of Justice Statistics, I will seek out opportunities to disseminate accurate and credible data better.

20. What will be your priorities?

Response: If confirmed, my priority is to build on the Bureau's existing reputation for excellence in providing accurate, credible and timely data on the civil and criminal justice systems in the United States in furtherance of the Department's mission and Congressional requirements.

Responses to Senator Kennedy's
Written Questions to Jeffrey Sedgwick
Nominee for Director of Bureau of Justice Statistics
U.S. Department of Justice
March 21, 2006

I commend your dedicated service to the Commonwealth as a professor at the University of Massachusetts in Amherst. I commend you on your nomination to serve as Director of the Bureau of Justice Statistics and I would appreciate your views on the following important issues.

1. As you know, concerns have been expressed that political pressures in the Department of Justice have broad ramifications for the role of its employees. If you are confirmed as the Director of the Bureau of Justice Statistics, how will you guarantee that you are able to maintain your independence and integrity even if they are challenged in significant ways?

   Response: If confirmed, I will abide rigorously by relevant Congressional authorizations as well as with non-legislative directives, regulations, standards and requirements (including those of the Office of Federal Statistical Policy and Standards, the Federal Committee on Statistical Methodology, the "Principles and Practices for Federal Statistical Agencies" of the National Research Council's Committee on National Statistics, and the Department of Justice Advisory Board on Research and Statistics).

   a. In particular, what would you do if you were asked to delay release of statistics or reports that you had deemed ready for publication?

      Response: Congressional authorization gives the Bureau complete control over its statistical publications, their content and the timing of their release. I would insist on that degree of independence to preserve the impartiality and professional credibility of BJS data.

   b. What would you do if proposed revisions in the structure of a study appeared to be governed by political motivations in conflict with expert scientific advice?

      Response: If confirmed, I will consult with stakeholders in BJS data to develop and maintain a comprehensive calendar of statistical reports and releases designed to put accurate and credible information into the hands of data users in a timely manner.

   c. How would you respond if the Attorney General or others in the Administration demanded pre-release oversight and review of publication of the Bureau of Justice Statistics?

Response: The Attorney General currently requires that the BJS Director provide the Office of the Attorney General with a notification of intent to publish 30 days before release along with a copy of the report to be released. I agree that some degree of pre-publication notice is appropriate to facilitate intra-agency coordination so long as it does not impair the statistical validity of a study.

2. Despite widespread congressional support for substantive statistics on sexual violence in the nation's prisons, objections have been raised to the framework proposed by the Bureau of Justice Statistics for the first comprehensive national survey to address this issue. The National Prison Rape Elimination Commissioners have expressed strong concerns that the study could yield inaccurate or misleading information that will be counterproductive.

   a. How would you move forward with this study in order to achieve its goals of understanding the prevalence of coercive sexual relations in prisons?

   Response: If confirmed as Director, I will consult with all stakeholders in BJS data to identify opportunities to enhance timely dissemination of accurate and credible data, to provide better for the equal protection of all Americans from threats to their personal safety and security.

   b. Would you be willing to work with the National Prison Rape Commissioners to ensure that their views are taken into account?

   Response: Yes.

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March 13, 2006

The Honorable Arlen Specter
Chairman
Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20010

VIA FACSIMILE

Dear Chairman Specter and Senator Leahy:

On behalf of the Anti-Defamation League, we write in support of the confirmation of Sharee Freeman as Director of the Justice Department's Community Relations Service. We believe Ms. Freeman has the experience, disposition, and skills necessary to continue to lead this agency in its important work. We urge the Committee to act promptly and favorably on this nomination.

ADL has worked closely with CRS professionals across the country to help resolve a variety of intergroup disputes. On many occasions since the establishment of CRS in the 1964 Civil Rights Act, CRS professionals, working with law enforcement officials and civil rights organizations, have acted to defuse community tensions and prevent disorders that could have escalated out of control. CRS derives credibility and respect from its association with the Justice Department – but its separate status within the Department and its field structure are essential components in effectively performing its conflict resolution mission. Over the past four years, Ms. Freeman has worked vigorously to acquire broad exposure to the impact of bias-motivated criminal activity – and the range of intervention and prevention techniques essential to successfully direct CRS.

Anti-Defamation League of B'nai B'rith, 1100 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036
(202) 452-8320 FAX (202) 296-2371 E-mail: natigov@adl.org Web site: www.adl.org

Under Ms. Freeman's leadership, CRS has effectively complemented law enforcement's response to the backlash of irrational attacks against individuals perceived to be Muslim, Middle Eastern, or of South Asian descent or appearance. CRS conflict mediators have developed community-based programs – including new anti-bias and cultural diversity training initiatives – that have helped confront the hatred and misunderstanding that can lead to violent bigotry.

We urge the Committee to take prompt action to confirm Sharee Freeman as CRS Director. We look forward to working with her to continue to make progress toward securing justice and fair treatment for all as we confront significant intergroup challenges in the future.

Sincerely,

Michael Lieberman
Washington Counsel

Jess N. Hordes
Washington Director

Nominations Hearing

Gray H. Miller
to be United States District Court for the Southern District of Texas

Thank you, Mr. Chairman, for convening today's hearing to consider the nomination of Gray H. Miller to be a United States District Court Judge in the Southern District of Texas. I am delighted to introduce Mr. Miller to this committee. He is a distinguished and talented lawyer with a commendable lifelong history of public service. I have every confidence that Mr. Miller's professional record confirms that he possesses the necessary qualifications to be a federal judge. Furthermore, I have every confidence that Mr. Miller would be an exceptional member of the federal judiciary. Gray Miller deserves the support of this committee and the support of the United States Senate.

Mr. Miller has been nominated to fill the vacancy created when Judge Ewing Werlein assumed senior status earlier this year. Judge Werlein serves in the Houston Division of the Southern District of Texas and he has served his country and the legal profession admirably.

This move creates a vacancy in one of the most important and active divisions in the entire Federal judiciary. This division is responsible for shepherding some of the nation's most complex and notable commercial disputes and criminal prosecutions. It is important that we fill this vacancy quickly so that the work of the Southern District of Texas remains unaffected.

Familiarity with the local community is an important trait for a judicial nominee. Mr. Miller is a long time resident of Houston, Texas and a graduate from the University of Houston with both his undergraduate and law degrees. While working his way through school, Mr. Miller was a Houston police officer for nine years before graduating with his law degree.

Mr. Miller then engaged in private practice at Fulbright & Jaworski, L.L.P., where he has excelled and become the head of an important practice group within the firm.

His devotion to community service and pro bono legal work further solidifies his connection to the Houston metropolitan area. Mr. Miller has previously served on the Board of Trustees of the Mental Health/Mental Retardation Authority of Harris County, Texas and on the Board of the Texas Department of Mental Health & Mental Retardation. Mr. Miller is also a member of the Houston Volunteer Lawyers Program, providing pro bono legal services to indigent citizens of Houston. He also actively supports Habitat for Humanity of Harris County and TEXAS Our Texas Foundation, as well as supporting local Houston schools for students with learning disabilities and drug and alcohol problems. He has demonstrated exceptional generosity in his willingness to serve the Houston community.

From a Congressional Page in 1965 to a police officer in the 1970s to an accomplished trial advocate, Mr. Miller understands and respects the role of our three branches of government. Mr. Miller has an unfailing respect for the judiciary and the jury system. It is with this understanding that I believe Mr. Miller will serve his country honorably as a federal district court judge should - by interpreting and applying the law and adhering to established precedent.

Mr. Chairman, Mr. Miller is a skilled attorney who has a demonstrable, lifelong commitment to public service. He is a well-respected member of the legal profession. I believe Mr. Miller has the necessary qualifications to serve as a judge for the United States District Court for the Southern District of Texas. I am confident that he will prove to be a valuable asset to South Texas and an excellent member of the Federal judiciary. I commend President Bush for his choice, and thank you for your time and careful consideration of this fine jurist.

I look forward to today's hearing.

DAVID DREIER
CALIFORNIA

CHAIRMAN
COMMITTEE ON
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Congress of the United States
House of Representatives
Washington, DC 20515

March 14, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate

Dear Mr. Chairman,

I write today in support of the confirmation of Ms. Sharee M. Freeman to the position of Director of the Community Relations Service (CRS) at the United States Department of Justice. Ms. Freeman has served ably in this position since her original confirmation in 2001, and I believe her reconfirmation to this post is highly warranted.

Ms. Freeman has dedicated 24 years of her life to the federal government, in all three branches. I first came to know Sharee when she served as Full Committee Counsel for the House Committee on the Judiciary and subsequently as Counsel for the House Committee on International Relations. In those roles, she was a vital link between her committees and the House Committee on Rules, as we worked together to move critical legislation to the floor.

Ms. Freeman also has a distinguished legal resume, including having served thirteen years as Acting Assistant Solicitor for General Indian Legal Activities for the U.S. Department of the Interior, and as an Assistant District Attorney in your home state of Pennsylvania. Her tenure at the Department of Justice has been formally recognized by such groups as the National Organization of Black Law Enforcement Executive Board, from which she received the Robert Lamb Humanitarian Award, and from the International Association of Chiefs of Police, from whom she received the 2005 Civil Rights Award.

I believe Ms. Freeman has a record of accomplishment, integrity, and substance, I support her re-nomination to the Department of Justice. I request that this letter be inserted in the record of your committee's deliberations, and thank you for your consideration of this matter.

Sincerely,

David Dreier

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Leadership Conference on Civil Rights

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Asian American Justice Center

EXECUTIVE DIRECTOR
Wade J. Henderson

March 13, 2006

The Honorable Arlen Specter
Chairman
Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the Leadership Conference on Civil Rights, the oldest , largest and most diverse civil and human rights coalition, I write in support of the confirmation of Sharee Freeman for Director of the Justice Department's Community Relations Service. We urge the Committee to act promptly and favorably on this nomination.

As the only federal agency that exists to assist communities in addressing inter-group disputes, CRS plays an essential role in helping to promote inter-group harmony in our communities. Ms. Freeman's broad experience in the range of civil rights, fair housing and hate crime intervention and prevention techniques have proven essential in her role as Acting Director of CRS since 2001.

In 2001, President George W. Bush nominated her to serve as the Director of Community Relations Service 9CRS of the U.S. Department of Justice. She was confirmed by the Senate on November 6, 2001. As Acting Director of CRS, she ahs participated with her staff in many CRS deployments, sometimes providing training for law enforcement officers. She has established initiatives that address issues facing a post 9/11 world. Ms. Freeman has advanced CRS'focus on inclusive initiatives and support services that are geared towards communities with Arab, Muslim and Sikh populations.

In the aftermath of the terrorist attacks of September 11, some people have irrationally targeted their fellow Americans and others who appear to be of Muslim, or Middle Eastern, or South Asian descent or appearance for violence. The perpetrators of these crimes are lashing out at innocent people because of their personal chracteristics – their race, religion, or ethnicity. Federal and state law enforcement officials are now investigating hundreds of incidents that have been reported from coast to coast at places of worship, neighborhood centers, grocery stores, gas stations, restaurants, and homes. There is a role for law enforcement and a complementary for CRS conflict mediators and community-based programs to confront the hatred that can lead to violent bigotry.

Your Committee's prompt action t confirm Ms. Freeman as the new CRS Director will send an important message about the necessary work of that agency. If you or your committee require additional information please don't hesitate to contact me.

Sincerely,

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

For the record

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on Nominations
March 14, 2006

Last night the Senate confirmed another lifetime appointment to a federal court. That confirmation brought the total number of judicial appointments since January 2001 to 232, including the confirmations of two Supreme Court Justices and 42 circuit court judges. Of course, 100 judges were confirmed in the 17 months there was a Democratic majority in the Senate. In the other 45 months, 132 judges have been confirmed. Ironically, under Democratic leadership, the Senate was almost twice as productive as under Republican leadership.

It is most regrettable that this President has not fulfilled his promise to the American people to be a uniter. Nor has he fulfilled his pledge to complete his work in advance of vacancies and to make nominations promptly. Judicial vacancies have grown to more than 50 and the White House has failed to send nominees for more than half of those. Some of those vacancies have been sitting empty for more than a year. Over and over the White House has missed the deadline the President established for himself, and today, half of the judicial vacancies, 27, are without a nomination. One-third of those vacancies are already more than 180 days old and one-third of the judicial emergency vacancies are without a nominee.

If the White House would eliminate its partisan political and ideological litmus tests from the judicial nominations process and its emphasis on rewarding cronies and focus only on qualifications and consensus, the job of selecting nominees and our job of considering them for confirmation would be much easier. That is what last night's confirmation demonstrated. I look forward to reviewing the nomination of Michael Chagares in this light. Having the support of his home-state Democratic Senators means a good deal and points toward the kind of qualified consensus nominee [redacted] can be quickly confirmed.
who

Recently we have seen the President withdraw a circuit nomination after information became public about that nominee's rulings in a number of cases in which he appears to have had a conflict of interest. Those conflicts were pointed out not by the Administration's screening process or by the ABA, but by online journalists at Slate.com.

At a minimum that case reinforces a point about this White House's poor vetting process for important nominations. A number of nominations by this President have had to be withdrawn. Among the more well known are Bernard Kerik to head Homeland Security and Harriet Miers to the Supreme Court, which were withdrawn for different reasons. It was, as I recall, reporting in a national magazine that doomed the Kerik nomination and opposition within the President's own party that doomed the Miers nomination.

When we are considering lifetime appointments of judicial officers who are entrusted with protecting the rights of Americans and when we are reviewing important law

enforcement officials, it is important to be thorough. Unfortunately, this White House seems more interested in rewarding cronies.

I will add one comment with respect to the Bureau of Justice Statistics vacancy. This had traditionally been a bureau within the Department of Justice that was kept out of partisanship and politics. Sadly, that has not remained true during the Bush-Cheney Administration. Just as it has infused politics into science in other departments, this Administration has undercut the neutrality and credibility of BJS. That needs to be restored.

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NOMINATIONS OF BRIAN M. COGAN, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; MICHAEL RYAN BARRETT, OF OHIO, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO; AND THOMAS M. GOLDEN, OF PENNSYLVANIA, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WEDNESDAY, MARCH 29, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, DeWine, and Schumer.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good morning, ladies and gentlemen. The Judiciary Committee will now proceed. We have on the agenda the nominations of three candidates for United States District Court: Mr. Brian Cogan for the Eastern District of New York; Mr. Michael Barrett for the Southern District of Ohio; and Mr. Thomas Golden for the Eastern District of Pennsylvania.

I am going to yield the gavel in a moment or two to my distinguished colleague, Senator DeWine. We are moving to the floor with the immigration bill, and that requires a great deal of time.

Good morning, Senator Voinovich.

But before excusing myself, I want to make a few comments about Thomas Golden, who is the candidate for the Eastern District of Pennsylvania.

Senator SANTORUM. and I have a judicial nominating panel, bipartisan and representative, and Mr. Golden was selected by the panel as the nominee for the court, and Senator Santorum and I forwarded our recommendation to the President, and the President has submitted his nomination.

Mr. Golden comes from Berks County, Reading, Pennsylvania. Senator Santorum and I make it a point, as I know the Ohio Senators do, and all Senators, to have balance and distribution to the

extent we can. And Mr. Golden will be sitting in Reading and trying to bring access to the Federal court and convenience of the litigants and the lawyers in the neighborhood.

Tom Golden is a graduate of the Dickinson Law School in 1972. After graduating from Penn State in 1969, he has been with the law firms of Stevens and Lee and more recently with Fry, Hibschman and Golden. He is a general practitioner, has a very distinguished record at the bar, has served as president of the Pennsylvania Bar Association, and he comes to this nomination with an ABA rating of unanimously well qualified. So I welcome you here this morning, Mr. Golden.

I had a chance to talk with him briefly earlier today, and I do not think we are jinxing his nomination to say that we are planning his swearing-in ceremony. I think that is reasonably safe.

At this time I want to yield the gavel to my distinguished colleague, Senator DeWine, with my thanks for chairing these hearings. Michael?

Senator DEWINE. [Presiding.] Mr. Chairman, thank you very much.

Let me at this point turn to Senator Voinovich, who has an introduction.

PRESENTATION OF MICHAEL RYAN BARRETT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, BY HON. GEORGE VOINOVICH, A U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Thank you, Senator DeWine.

I am pleased today to be speaking on behalf of Michael Barrett, whom the President has nominated to serve on the U.S. District Court for the Southern District of Ohio. I welcome the Committee's review of Mr. Barrett, and I believe that you will come to the same conclusion that I have, that Mr. Barrett is well qualified to serve as a Federal judge and should be confirmed by the Senate. He has a distinguished and impressive record as a prosecutor, defense attorney, community leader, and he has deep roots in southwest Ohio. I have known him for 25 years.

Mr. Barrett is a graduate of the University of Cincinnati where he obtained his bachelor of arts in 1974 and his law degree in 1977. After graduating from law school, Mr. Barrett served as an administrative hearing officer for the State of Ohio where he helped resolve employment disputes arising out of changes to the Ohio employee classification system.

He then joined the Hamilton County prosecutor's office as an assistant prosecuting attorney. Upon joining the prosecutor's office, Mr. Barrett was assigned to the felony trial division where he participated in investigations, grand jury proceedings, and felony trials. In 1983, Mr. Barrett was promoted to be the chief assistant of that division.

In 1984, Mr. Barrett joined Graydon, Head and Ritchey, where he worked on both criminal and civil matters, initially as an associate before being promoted to a partner. In 1995, he joined his current firm Barrett and Weber where he has continued to practice in the same areas of law.

Mr. Barrett's clients in the criminal defense practice area covered the spectrum of the criminal code with a concentration in the area of white-collar crime. His civil litigation clients include a number of business clients, and his recent experience includes a number of security law cases in which he has represented individual plaintiffs as well as the Attorney General's Office for the State of Ohio. His practice has earned him several listings in Best Lawyers in America and Ohio's Super Lawyers. In addition, Mr. Barrett has received the Outstanding Service Award as a mediator for the U.S. District Court for the Southern District of Ohio.

In sum, Mr. Barrett has the broad courtroom experience that will serve him well as a Federal judge. He is eminently qualified to serve on this bench. He has also served on the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, which evidences the high esteem in which members of the Ohio Bar hold him and is testimony to his excellent character. I think it is important to get a sense of any judicial nominee's character because it will have a great influence over how the judge will manage his courtroom.

As a result of Mr. Barrett's fine academic and professional achievements, I am not surprise that the American Bar Association has found Mr. Barrett qualified to be on the Federal bench. His legal credentials are not the only reasons I support his nomination. In an age where I believe too many people do not take the time to become active members of their communities, Mr. Barrett has been a community leader. Some of Mr. Barrett's community activities include his current service on the Board of Trustees of Talbert House, a Cincinnati area social service organization; his current service as Director of Boys Hope/Girls Hope of Cincinnati, an organization to provide an array of services for at-risk children; and his past service as trustee of the Children's Services of Hamilton County.

When I was Governor, I was pleased to appoint Mr. Barrett to the Board of Trustees of the University of Cincinnati. He served on that Board of Trustees for 9 years, including a period as Chairman of the Board of Trustees. Involvement in one's community is important. We need judges who not only have exceptional legal skills, but also who recognize how the law impacts on individuals and communities. I believe Mr. Barrett has this understanding because he is out in his community every day.

In reviewing his academic professional record, it is clear he certainly is well qualified to serve as a Federal district court judge on the U.S. District Court for the Southern District of Ohio, and I look forward to this Committee's review of his nomination.

I thank you for the opportunity to introduce him to you today, and, of course, Mr. Chairman, you know Mr. Barrett's qualifications as well or better than I do.

Senator DEWINE. Senator Voinovich, thank you very much, and we know that you have a very busy schedule today, so you will be excused at any time that you need to leave. We appreciated very much your great statement.

Senator Santorum, we welcome you.

PRESENTATION OF THOMAS M. GOLDEN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. Thank you, Mr. Chairman. It is great to be here, and it is a real pleasure for me to come before the Committee to introduce Tom Golden. Tom is the nominee of the President for the Eastern District Court in Pennsylvania. He is from Berks County, which is a county that has long sought a nominee for a courtroom in Reading that has largely been unoccupied for quite some time. It has been quite an inconvenience for lawyers in the western part of the Eastern District, and this nominee is very important not only because of the judicial emergency that exists because of this vacancy. The Administrative Office of the U.S. Courts has declared this district to be a judicial emergency, and so we need Tom Golden on the court to fill that need, but also for the need of lawyers practicing in—who have to drive all the way from the western part of the Eastern District into Philadelphia basically to receive justice. And this is an important nominee for that reason.

Tom has been rated unanimously well qualified by the Bar Association. I am not surprised at that, in part because of Tom's active participation in the Bar Association over the years. He was President of the Pennsylvania Bar Association in 2003 and 2004, serves as a member of the House of Delegates to the ABA and has since 2002, has been head of the local bar, the whole nine yards. He has been very, very active in the legal field, reaching the highest levels as a result of his outstanding legal abilities as well as his tremendous dedication to the bar.

He has been active—like all the nominees that we are very proud to put forward, he is also active beyond the legal field, in the area of his church and in the community, which I particularly look at as something that is important. He is not someone who has just got great legal scholarship, but also understands and has a footing in the community and understanding the importance of community service and being an active citizen in your community.

He has one of the most outstanding education backgrounds. He went to Penn State University and Dickinson School of Law. I happened to go to Penn State University and Dickinson School of Law, so that is why I say it is probably one of the most outstanding backgrounds that I can imagine. So he comes from good stock. In his legal career, he is the managing partner at a firm in Reading. His practice concentrates in the area of business, civil litigation, real estate, and estate planning. He is truly, as the Bar Association, incredibly well qualified for this position, and it is an honor to come here today to offer his name in nomination before the Committee, and I would urge your speedy confirmation in moving this nominee through the process.

Thank you, Mr. Chairman.

Senator DEWINE. Senator Santorum, thank you very much. We appreciate your good statement.

Senator Schumer?

PRESENTATIONO F BRIAN M. COGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Mr. Chairman, thank you. I am happy to introduce Mr. Brian Cogan of New York as we consider his nomination to the Federal court for the Eastern District of New York, which sits in Brooklyn, a borough which I have some familiarity with, being the first Senator from Brooklyn in 140 years. Alas, Mr. Cogan was born in Chicago, but he has quickly moved to New York. After going to the University of Illinois, he migrated to our great State and attended Cornell University Law School, where he was editor for the law review. He went on to clerk for a Federal judge in the Southern District of Florida—he had sort of wanderlust in his younger days—before having the good sense to return to New York where he has been, I am proud to say, ever since.

Mr. Cogan has had a long and distinguished career. He joined the firm of Stroock, Stroock and Lavan in 1980, where he made partner in 1988, and has worked on many high-profile domestic and international cases. In 2004, he was appointed the general counsel of Stroock.

Joining Mr. Cogan today is his wife, Robin Keller, also a partner at Stroock. My brother is a partner at another New York law firm, and when he was dating seriously one of the other partners, they passed what they called the Bob and Pam rule: no marriages in the partnership. And they did not get married. He is happily married now, I might add. Just for your awareness, Mr. Chairman.

[Laughter.]

Senator SCHUMER. So I guess Stroock has the good sense not to have the Bob and Pam rule in its rules. The two obviously make a fabulous team, and they have co-authored several publications together on bankruptcy law.

Despite his busy practice, Mr. Cogan has found considerable time for public service. He serves as an attorney for enlisted soldiers throughout the New York Guard JAG Corps, for which he received an award from his firm. And through the program he provides soldiers with legal assistance as they prepared for deployment.

Mr. Cogan has helped countless soldiers by devoting up to 30 hours per month to the program since 2002, and knowing how busy a corporate partner is in a New York corporate law firm, that is a huge undertaking for which we thank you. I know I speak for all of my colleagues when I commend Mr. Cogan for his public service.

Now I want to take a moment, Mr. Chairman, to recognize that we in New York have a system in place for nominating Federal judges that works. With all of the sturm und drang about the nomination of judges, you would think the disagreements between the White House and a place like New York with two both shy Democratic Senators would lead to all kinds of problems. But, no, just the opposite. We work together in an effective and bipartisan way to ensure that only the most qualified, moderate, and diverse candidates are considered. And the nomination of Mr. Cogan and what I expect to be a smooth and speedy confirmation is testament to that process in New York.

So I would like to thank you, Mr. Chairman, for holding this hearing. I want to congratulate Mr. Cogan. I am very glad that his wife will remain a partner in the firm so they will be able to live a decent lifestyle, and I hope the hearing moves forward expeditiously.

Senator DEWINE. Well, I thank my colleague from New York for that very fine introduction.

I would invite our three nominees to come up now, and I will, as we are doing that, introduce Michael Barrett as well. Senator Voinovich has already done this, but I am going to add my comments at this point.

It is my pleasure and honor to introduce my fellow Ohioan Michael Barrett to the members of this Committee today. Michael Barrett's legal career spans almost 30 years. It has been certainly very distinguished not only by his accomplishments as a litigator, but also by his truly extraordinary record of public and civic leadership.

Gentlemen, please have a seat. This is going to take more than 30 seconds.

A brief summary of his background offers ample evidence of his qualifications. He is a graduate of the University of Cincinnati where he earned both his bachelor of arts degree and his law degree. Directly out of law school, Mr. Barrett served the State of Ohio as an administrative hearing officer for over a year and then moved to the Hamilton County prosecutor's office, where he served first as an assistant prosecutor and then as chief assistant prosecuting attorney of the felony trial division.

During this time, Mr. Barrett also served as chief of the special County Arson Task Force, supervising the investigation and prosecution of arson cases.

After 6 years in the Hamilton County prosecutor's office, Mr. Barrett moved into private practice with the firm of Graydon, Head and Ritchey, where he remained for 10 years as associate and then as a partner. He was listed several times in Best Lawyers in America for his domestic relations practice. He then joined the Cincinnati law firm of Barrett and Weber, where he continues to practice today in the area of general litigation.

Mr. Barrett has an extremely diverse career as a litigator. He has argued in both State and Federal courts, and his court appearances are almost evenly split between civil and criminal cases. In addition to his background as a prosecutor, he has developed a very successful defense practice. He is a member of the National Association of Criminal Defense Attorneys, and it is particularly noteworthy that he has argued capital murder cases as both a prosecutor and as a defense attorney.

Mr. Barrett's expertise, however, extends well beyond litigation. He was appointed as a special master trustee in a class action lawsuit in which he analyzed over 900 claims responses in the allocation of settlement funds under that suit. He also was chosen to be the receiver in a securities case, and in that role he worked with counsel to conduct a collection and liquidation of investors' assets, which is an important and often very complicated financial and legal task.

His experience with alternative dispute resolution techniques is also quite impressive. He was a board member of the Cincinnati Center for the Resolution of Disputes and was awarded the Outstanding Service Award as a mediator for the Southern District of Ohio.

This unusually diverse legal background gives Mr. Barrett a broad view of the legal system and a wide understanding that will help him as a successful Federal judge.

Mr. Barrett is also an extremely accomplished community leader who has served the public in a variety of roles, only a few of which I will mention here today. He served on the Supreme Court of Ohio Board of Commissioners on Grievances and Discipline for 15 years. That is a long time, Mr. Barrett. He was on the Board of Trustees for the University of Cincinnati, the Board of Trustees of the Health Alliance of Greater Cincinnati. He was also co-chair of the Police and Justice Committee of Community Action Now, a project formed by and for Cincinnati community leaders and charged with the task of achieving greater equity, opportunity, and inclusion for all Cincinnati residents.

He has also been involved with a wide range of charitable and social service organizations, including Children's Services of Hamilton County, Talbert House, and Boys and Girls Hope of Cincinnati.

Michael Barrett is clearly an accomplished attorney and experienced community leader. Both are important qualifications for this position. Given his background and experience, it is not surprising that a substantial majority of the ABA panel that reviewed his qualifications found him to be well qualified, which, of course, is the highest possible rating. The remaining members of the panel gave him the next highest rating of qualified. This very high rating merely confirms his excellent credentials for the position.

Even more important, however, is simply that Mike Barrett is a good person, a good man. I have spoken with attorneys and judges who have worked with him, both with him and against him, and they all describe him as a calm, even-tempered man who is always willing to listen. They confirm what I think of Mike Barrett. He is a bright, affable, intellectually open-minded person with a strong sense of the law, someone who will make an excellent Federal judge.

Michael Barrett is an outstanding nominee, and I strongly believe that he will serve as a great Federal District Court Judge for the Southern District of Ohio.

Let me ask the members of the panel now to stand and I will swear you in. Please raise your right hand. Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GOLDEN. I do.

Mr. BARRETT. I do.

Mr. COGAN. I do.

Senator DEWINE. You may be seated.

We welcome all of you here, and we will give each one of you the opportunity to make any kind of opening statement and also the opportunity to introduce anyone who is with you today, including certainly any members of your family. Mr. Golden?

STATEMENT OF THOMAS M. GOLDEN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. GOLDEN. Good morning, Mr. Chairman.

Senator DEWINE. Good morning.

Mr. GOLDEN. I can't help but start by thanking the President for nominating me. I am deeply gratified by the remarks made by Senator Specter and Senator Santorum. Without their help, I would not be here. Without their kindness and support, I would not be here.

It is a pleasure for me to introduce to you my family who is with me. Seated behind me in the first row is my daughter, Kristin Mancuso; my two grandsons, Will Mancuso and Alex Mancuso. Behind those beautiful people are my son Matthew and his lovely wife, Olivia, and the person who has made it possible for me to be here, my wife, Penny.

Senator DEWINE. Welcome.

Mr. GOLDEN. It is a pleasure to be here, Senator, and thank you, and I conclude my remarks.

[The biographical information of Mr. Golden follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Thomas Martin Golden.

2. **Address: List current place of residence and office address(es).**

Residence: Reading, PA 19611

Office: 1100 Berkshire Boulevard, Suite 201
Wyomissing, PA 19610

3. **Date and place of birth.**

November 1, 1947
Pottsville, PA

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married - Pelagie (Penny) J. (Fankhanel) Golden
Homemaker and Volunteer

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Pennsylvania State University 1965-1969
Bachelor of Arts in History 1969

Dickinson School of Law 1969-1972
Juris Doctor Degree 1972

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Summer 1969 - Jayes Equipment Company - salesman.

1969-1972 - Part-time during academic year and full-time in the summers at Legislative Reference Bureau, Commonwealth of Pennsylvania.

1972-1979 Associate and Shareholder, Stevens & Lee.

1979-Present. In 1979 I joined a partnership named Fry, Hibschman and Golden that has evolved into my current firm, Golden ♦ Masano ♦ Bradley. I have been the managing partner of the original partnership from 1980 to the present date.

National Penn Bank Berks County Advisory Board, Member 2001-Present
Pennsylvania Bar Association, President 2003-2004, Officer 2002-2005, Board of Governors 1998-2001, House of Delegates 1993-Present, Member 1972-Present
Pennsylvania Bar Foundation, Director 2003-2004
Pennsylvania Bar Insurance Fund & Trust, Trustee 2005-Present
Pennsylvania Bar Institute, Director 2000-2004
Lawyers Concerned for Lawyers, Inc., Director 2001-Present
Berks County Bar Association, Officer, Member, Board Of Directors 1991-1994
Berks County Golf Association, President and Board of Directors 1994-1998
Berkshire Country Club, President, Officer, Board of Directors 1986-1992
Caron Foundation, Trustee 1991-1996
Republican National Lawyers Association, Board of Governors 1994-2005, Member Mid 1980's-Present
Pennsylvanians for Modern Courts, Advisory Board Member 2005-Present
John Paul II School for Special Learning Development Board, Member 1988-1994

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Alvernia College, Doctor of Humane Letters for Service to the

Community and Legal Profession, 2003

Berks County Bar Association Leroy S. Hyman Award for Outstanding Service to the Berks County Bar Association, 2004

Berks County Bar Association Liberty Bell Award, 2004

Berks County Bar Association Presidential Award for Distinguished Service, 2001

Pennsylvania Bar Association Special Achievement Award - Client and Community Relations Committee Chair, 2000

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

Pennsylvania Supreme Court Continuing Legal Education Committee, Chairman 2006-Date, Vice-Chairman 2004-2005, Member 2003-Present
Pennsylvania Supreme Court Disciplinary Board Hearing Officer, 2004-Present

PENNSYLVANIA BAR ASSOCIATION

Immediate Past President, 2004-2005
President, 2003-2004
President-Elect 2002-2003
House of Delegates, Member, 1993-Present
Board of Governors, Member, 1999-2001

Committees and Sections

Pennsylvania Bar Association-Sections of Business Law, Solo & Small Firm Practice, Real Property Probate & Trust Law, and Elder Law
Pennsylvania Bar PAC, Chair, 2004-2005, Member 2002-2005
Pennsylvania Bar Foundation, Life Fellow, Director, 2003-2004
Pennsylvania Bar Insurance Fund & Trust, Trustee, 2005-Present
Mid-Year Meeting, Chair, 2003
Pennsylvania Bar Institute, Director, 2000-2004
Lawyers Concerned For Lawyers, Inc., Director, 2001-Present
PBA/PBI Pension Committee, Chair, 2000-2001, Member, 1998-2001
Editorial Committee, Vice Chair, 1999-2003, Member, 1994-2003
Client and Community Relations Committee, Chair, 1998-1999 Member, 1997

Lawyers' Assistance Committee, Member, 1998-Present
Commission on Integrity/Practice of Law, Member, 1999-2000
Task Force on PBA Entities & Operations, Member, 2000-2001
Task Force for Quality of Life/Balance, Member, 1999-2001
Board of Governors Retreat, Co-Chair, 1999
Commission for Justice Initiatives, Member, 2004-Present

AMERICAN BAR ASSOCIATION

House of Delegates, Member, 2002-Present
Sections of Business Law, Law Practice Management and General Practice

BERKS COUNTY BAR ASSOCIATION

Immediate Past President 1994
President 1993
President Elect 1992
Vice-President 1991
Chairman, Young Lawyers' Section 1981

Committees and Sections

Civil Dispute Resolution Program
Judicial Evaluation
Law Office Management
Lawyers Advisory Committee Chair
Nominations Committee Chair

Miscellaneous

American Trial Lawyers Association
Pennsylvania Trial Lawyers Association
Justice William Strong Chapter American Inns of Court
Defense Research Institute
American Bar Foundation, Fellow
Berks County Bar Foundation

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

To the best of my knowledge, the organizations to which I belong that are active in lobbying before public bodies are as follows:

American Bar Association

Pennsylvania Bar Association
American Trial Lawyers Association
Pennsylvania Trial Lawyers Association
Republican National Lawyers Association

Other organizations to which I belong, not previously listed in this questionnaire, are as follows:

Berkshire Country Club
Endlich Law Club
Holy Name High School Capital Campaign Leadership Committee
Jesuit Center for Spiritual Growth Advisory Board
Moselem Springs Golf Club
Pennsylvania State University Planned Giving Committee
St. Ignatius of Loyola Parish Finance Committee
The Pennsylvania Society
United Way of Berks County Alexis de Tocqueville Society,

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Admitted to Bar in Pennsylvania - 1972

Admitted to practice in all local and Appellate Courts of Pennsylvania - 1972

Admitted to the Supreme Court of the United States - 1985

Admitted to the United States Court Of Appeals for the Third Circuit - May 29, 1990

Admitted to the United States District Court
Eastern District of Pennsylvania - 1975

Admitted to the United States District Court
Middle District of Pennsylvania - Special Admission
Granted May 14, 1979

There have been no lapses of membership in any of the above Courts.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you**

have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

As President and Immediate Past President of the Pennsylvania Bar Association I gave many speeches over a two (2) year period on a wide variety of subjects. I addressed the House of Delegates, Sections and Committees of the Pennsylvania Bar Association and many county bar associations. The subject matter of the speeches varied but topics included professionalism, unauthorized practice of law, legislative initiatives and many other items of interest to the profession. Also I gave speeches to school groups relating to the Constitution and dispute resolution through peaceful means. Further, on a few occasions, I delivered speeches to the general public that addressed legal issues and participated as a speaker on panel discussions relating to Medical Tort Reform and legislative activities of the Pennsylvania Bar Association. Copies of written speeches involving constitutional law or legal policy are attached.

Pennsylvania Bar Association, The Pennsylvania Lawyer Magazine (July, September, November 2003, January, March, May 2004)
Side Bar Columns

The Start of Something Big
"Talking Up" Our Constitution
Then v. Now: Why Supporting the PABAR-PAC is the Right Thing To Do
Communication is Key - The *Lawyer* at 25
Medical Society Billboards: More than a Roadside Aggravation
Leaving Confident in the Vitality of PBA and the Profession

Federal Bar Association Issue 1, 2004
Federal Bar Association Veterans Law Section

Pennsylvania Bar Association Takes Stand on Legal Representation for Veterans

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in good health. My last physical was on September 23, 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

Not applicable.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

None. I have never been a candidate for elective public office.

17. **Legal Career:**

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

1. 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;

No.

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

No.

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

1972-1979 Associate and Shareholder, Stevens & Lee, 111 North Sixth Street, P.O. Box 679, Reading, PA 19603-0679.

1979-Present In 1979 I joined a partnership named Fry, Hibschman and Golden that has evolved into my current firm, Golden ♦Masano ♦ Bradley. I have been the managing partner of the original partnership from 1980 to the present date. Golden ♦ Masano ♦ Bradley is a general practice law firm.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

During my 32 years of practice, I have truly become a general practitioner. My practice includes litigation, municipal law, business law, and estate planning and settlement.

In my first 7 years of practice I worked principally in civil litigation, primarily as an insurance company defense lawyer, but was also exposed to numerous practice areas including business, banking, municipal and estate planning work. The bulk of my practice, however, was civil litigation.

I have handled literally hundreds of matters involving litigation or the potential for litigation. After I began my partnership with Howard M. Fry in 1979, and for the next ten years, my practice remained primarily insurance company defense litigation and civil litigation with a growing client base involving businesses, municipalities and individuals. As time has gone by, my role as an advocate in litigation matters has decreased and my role as a counselor to my clients in their business, governmental and personal matters has increased. Today, my practice primarily involves advice and direction to my clients and assisting them in effectuating and protecting their interests.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients include a college, banks, municipalities, corporations and individuals. I do not hold myself out as a specialist in any particular legal field. Rather, I draw upon my experience in a broad range of subjects to assist my clients in solving the problems that they present to me and counseling those clients to avoid future difficulties.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

In the first ten to fifteen years of my practice, I appeared in court frequently. Over time, my active participation in litigation matters has decreased. During the last five (5) years, I have occasionally appeared in court.

2. What percentage of these appearances was in:

(a) federal courts; 5%
(b) state courts of record; 95%
(c) other courts.

3. What percentage of your litigation was:

(a) civil; 99%
(b) criminal. 1%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

It is my estimate that I participated in at least twenty cases that were tried to verdict or judgment. I served primarily as chief counsel but at times I was also a co-counsel or associate counsel.

5. What percentage of these trials was:

(a) jury; 50%
(b) non-jury. 50%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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) Rodolfo Folino and Lidia Folino vs. Howard J. Young, Jr., Judith N. Agsten and Kendall Stitzel
Berks County Court of Common Pleas No. 85 November 1982
Honorable W. Richard Eshelman

Attorney for the Plaintiffs
John R. Badal, Esquire
Liever, Hyman & Potter
50 North 5th Street, 4th Fl.
P.O. Box 782
Reading, PA 19603
610-375-6131

Attorney for Howard J. Young, Jr. -
David M. Kozloff, Esquire
Kozloff Stoudt
2640 Westview Drive, P.O. Box 6286
Wyomissing, PA 19610
610-670-2552

Attorney for Judith N. Agsten and Kendall Stitzel -
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

The action arose from personal injuries, which were sustained by the Plaintiff, Rodolfo Folino, on December 15, 1980 in an early afternoon auto collision. The claim was brought against the driver of the vehicle owned by my client, Defendant Judith N. Agsten and loaned to the Defendant, Young, by her daughter, my client, Kendall

Stitzel. The interesting part of this case is the fact that the Defendant Young had been convicted of vehicular homicide due to the death of a passenger in the vehicle when the collisions occurred. At trial, both counsel for Defendant Young and myself argued to preclude the conviction from being introduced during the course of the trial. The Judge granted our Motion. Further, after four (4) days of trial, the court granted my Motion for Compulsory Nonsuit as to my client, Defendant Kendall Stitzel, since the Plaintiff was unable to produce sufficient evidence as to negligent entrustment by my client to Defendant Young. After a defense verdict, this case was appealed to the Superior Court, which reversed and returned it for a new trial, as to Defendant Young above.

2) Raymond R. Frey and Sarah Jane Frey vs. Jay B. Herman, Harley D. Lichtenwalner and Linda A. Lichtenwalner
Berks County Court of Common Pleas No. 4715 Equity Docket, 1980
Honorable Frederick Edenharter

Attorney for Plaintiffs -
Scott L. Huyett, Esquire
538 Elm Street
Reading, PA 19601
610-373-6453

Attorney for Defendant Jay B. Herman -
Kenneth E. Sands, Esquire
12 Schoolhouse Lane
Fleetwood, PA 19522
610-944-9207

Attorney for Defendants Harley D. Lichtenwalner and Linda A. Lichtenwalner
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

This case was an equitable matter seeking the imposition of a constructive trust of real estate owned by the Lichtenwalners for a conveyance made to them by Defendant Herman. I was engaged by Chicago Title Insurance on behalf of Mr. and Mrs. Lichtenwalner. After a three-day non-jury trial, and appropriate filing of Proposed Findings of Fact and Conclusions of Law, the Honorable Frederick Edenharter,

Chancellor, denied the Plaintiffs Request for Equitable Relief and the Plaintiffs were directed to pay the cost of the proceedings. Subsequent to the trial, the Plaintiffs filed a Petition asserting a newly discovered witness and after-discovered evidence. We opposed the Petition alleging that this witness was available at the time of trial and also the facts that the proposed witness would testify to were known to the Plaintiffs prior to trial. After Argument, the trial Judge sustained our position and refused to re-open the case, saving considerable expense and inconvenience.

3) Lee G. Grogg, Jr., Executor of the Estate of Lee G. Grogg, Sr., Deceased vs. LeRoy E. Seip, LeRoy K. Seip and Laura K. Seip, his wife
Berks County Court of Common Pleas No. 275 February 1979
Honorable Frederick Edenharter

Attorney for Plaintiff -
John J. Speicher, Esquire
Leisawitz Heller Abramowitch Phillips, P.C.
2755 Century Boulevard
Wyomissing, PA 19610
610-372-3500

Attorney for Defendant LeRoy E. Seip -
David M. Kozloff, Esquire
Kozloff Stoudt
2640 Westview Drive, P.O. Box 6286
Wyomissing, PA 19610
610-670-2552

Attorney for Defendant LeRoy K. Seip and Laura K. Seip -
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

This case was a wrongful death and survival action brought on behalf of two decedents who were asphyxiated from the fumes of a car left running in a garage, which was beneath the apartment in which the decedents lived. I defended the property owners and Attorney David Kozloff defended the father of the property owners who it was alleged left the car running. Prior to trial, I was authorized to make an offer of settlement that was rejected by the Plaintiff. There was a Plaintiff's award in both estates, but it was

less than the prior settlement offer. During the trial, the Plaintiffs had offered an expert actuary. We were able to undermine the credibility of the actuary when I remembered that I had read an article prepared by him which detailed what information was necessary to establish a future earnings loss in a death case. When cross-examined it turned out that many of the answers to the questions that he needed to form his opinion were, in fact, not supplied and his own article had impeached his credibility. It was a major factor in securing a favorable result even though the verdict was adverse.

4) Commonwealth vs. Edward J.Damario, III.
Berks County Court of Common Pleas No. 139 of 1974
Honorable W. Richard Eshelman, President Judge

Attorney for the Commonwealth -
G. Roderick Snyder, Esquire, (Deceased)

Attorney for Defendant Edward Damario
Robert T. Miller, Esquire (Deceased) and
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

Edward J. Damario, III was charged with murdering both of his parents.

The late Robert T. Miller and I were appointed as co-counsel to represent Mr. Damario. At the time of the crime, Mr. Damario was suffering from paranoid schizophrenia. In 1975 the case was brought to trial before a jury. After the trial the jury returned a verdict of not guilty by reason of insanity. Mr. Damario was subsequently committed to a state mental health hospital where he remains until this day.

5) Jesse L. Pleet vs. Valley Green Associates, National Properties, Inc., and Hayes Construction, Inc.
Berks County Court of Common Pleas
Honorable Thomas J. Eshelman
Citation 1 Pa. D. & C. 4th 563 (1987) affirmed by 371 Pa. Super. 530, 538 A. 2d. 567 (1988)

Attorney for Plaintiff -
Alan B. Ziegler, Esquire
532 Elm Street

Reading, PA 19601
610-374-8359

Trial Counsel for Valley Greene Associates and National Properties -
John A. Harenza, Esquire
Stevens & Lee
111 North Sixth Street
P.O. Box 679
Reading, PA 19603-0679
610-478-2128

Appellate Counsel for Valley Greene Associates and National Properties -
John D. Snyder, III, Esquire
146 Sproul Road
Malvern, PA 19355
610-644-1757

Attorney for Defendant Hayes Construction, Inc. -
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

Jesse Pleet, a Reading Attorney, acted as the named Plaintiff in a class action lawsuit seeking damages pursuant to the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. §3101-3414. We filed Preliminary Objections in the form of a Demurrer which were sustained in the trial court and affirmed on appeal.

6) Commonwealth of Pennsylvania vs. William Francis Kahley, a/k/a Gerald Guido
Berks County Court of Common Pleas No. 593, 593a, 594, 594a and 595 of 1974
Honorable James Bertolet (Deceased)
467 Pa. 272

Trial Counsel for the Commonwealth -
Charles A. Haddad, Esquire
209 North Monroe Street
Boyertown, PA 19512
610-375-1101

Appellate Counsel for the Commonwealth -
Grant E. Wesner, Deputy District Attorney For Law

(Deceased)

Attorney for Defendant, William F. Kahley -
Raymond C. Schlegel, Esquire, (Deceased) and
Thomas M. Golden, Esquire, Co-Counsel
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

William F. Kahley was charged with murder in the first degree, conspiracy, robbery, and assault with intent to kill. After a prolonged trial, Mr. Kahley was convicted of all the offenses. Mr. Schlegel and I were appointed by the Court of Common Pleas of Berks County and were asked to serve at very little compensation. It was a challenging and interesting assignment. Although our defense was not successful and Mr. Kahley was convicted of the crimes alleged, the appeal process was long and raised significant constitutional issues relating to the testimony given by the arresting Commonwealth officer. Inadvertently, it entered the record that Mr. Kahley had exercised his Fifth Amendment constitutional rights. Over objection, the Commonwealth was permitted to examine its witness regarding the Defendant's assertion of his right to remain silent. Ultimately, the Supreme Court of Pennsylvania did not find this to be a prejudicial error, but there were two (2) dissents. We did petition for a Writ of Certiorari to the United States Supreme Court, which was denied. There are few matters that an attorney can handle that are as serious as the defense of a client accused of murder.

7) Empire Steel Castings, Inc.vs.United Steelworkers of America, AFL-CIO
United States District Court for the Eastern District of Pennsylvania Civil Action No. 77-2608
455 F. Supp. 833; 1978 U.S. Dist. LEXIS 16570
Honorable Daniel H. Huyett, Jr. (Deceased)

Counsel for the Plaintiff:
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700
and
Carrol Hament, Esquire, Baltimore, MD (Deceased)

Counsel for the Defendant:
Norman M. Berger, Esquire
Unable to obtain this information

This case was an appeal from an arbitration proceeding. After an extensive hearing the arbitrator found that an employee had been improperly discharged by the Plaintiff. The arbitrator ordered the company to reinstate the employee with full back pay. Since the employee had been arrested during working hours and subsequently accepted a plea of guilty to selling narcotics on the premises of the Plaintiff, we took an appeal before the Honorable Daniel H. Huyett, Jr. Judge Huyett found in favor of the company and the United States Court of Appeals for the Third Circuit ultimately reversed and remanded. It is interesting from the standpoint that many labor attorneys across the country have contacted our office throughout the years to determine our strategy and handling of the matter before Judge Huyett which resulted in the favorable determination. Although we were unsuccessful in sustaining Judge Huyett's opinion on appeal, it has been well noted in the labor law practice area.

8) Manual J. DeJesus, Jr. and Nancy R. DeJesus, his wife vs. Betty J. Bartlett and Betty Grace
Berks County Court of Common Pleas No. 177, March, 1975
Honorable Fred Davis (Deceased)

Attorney for the Plaintiffs:
Kenneth E. Sands, Jr., Esquire
12 Schoolhouse Lane
Fleetwood, PA 19522
610-944-9207

Attorney for Defendant Betty J. Bartlett:
Hon. Forrest G. Schaeffer, Jr.,
Berks County Courthouse
633 Court Street, 3rd Fl.
Reading, PA 19601
610-478-6675

Attorney for Defendant Betty Grace
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

The claim arose from the purchase of a home by the Plaintiffs. They alleged various defects in the home, which caused them to incur additional costs, but also alleged that the condition of the home prevented the Plaintiffs from having children. After several days of trial on a mid-trial Motion, I was able to secure a compulsory non-suit as to the realtor defendant, Betty Grace.

9) James J. Gallen and Sara B. Gallen, Plaintiffs vs. Shillington Borough Zoning Hearing Board, Donald J. Witman, Intervenor, Shillington Borough, Intervenor, Defendants
Berks County Court of Common Pleas No. 192 June, 1988
Honorable Forrest G. Schaeffer

Attorney for Plaintiffs
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

Attorney for Defendant Shillington Borough Zoning Hearing Board
Adam B. Krafczek, Esquire
38 North 6th Street
P.O. Box 8467
Reading, PA 19603
610-373-4009

Attorney for Intervenor Donald J. Witman
Scott L. Huyett, Esquire
538 Elm Street
Reading, PA 19601
610-373-6453

Attorney for Intervenor Shillington Borough
John A. Hoffert, Jr., Esquire
Hoffert, Huckabee & Weiler, P.C.
536 Court Street
P.O. Box 1538
Reading, PA 19603
610-376-5441

This case related to a land use dispute. The Zoning Hearing Board of the Borough of Shillington had improperly granted a special exception to the Intervenor to develop a tract of land. Our clients were adjoining landowners and we

challenged the grant of this special exception throughout the process in front of the Zoning Hearing Board. On appeal to the Court of Common Pleas of Berks County and upon filing of the transcripts of the Zoning Hearing Board testimony and appropriate briefs, the Honorable Forrest G. Schaeffer, President Judge, reversed the decision of the Zoning Hearing Board. On appeal to the Commonwealth Court of Pennsylvania the decision was upheld.

10) In Re the Estate of Ira O. Fisher, Late of Shillington Borough, Berks County, Pennsylvania, Deceased.
Berks County Court of Common Pleas, Orphans Court Division
No. 6-96-1346 (1997)
Honorable Peter W. Schmehl

Attorney for Marshal R. Showalter (one of the Co-Executors)
Eugene C. LaManna, Esquire
147 North 5th Street, P.O. Box 8431
Reading, PA 19603-8431
610-376-4000

Attorney for Absalom L. Fisher, Co-Executor
Frederick G. McGavin, Esquire
Binder Law Office
3920 Penn Avenue
Sinking Spring, PA 19608
610-670-0500

Attorney for niece and nephew of the decedent, Kathleen Ashcroft and Clifford Fisher
Francis M. Mulligan, Esquire
Francis M. Mulligan, P.C.
147 North 5th Street
Reading, PA 19601
610-376-4000

Attorney for Reading Hospital and Medical Center
David H. Roland, Esquire
Roland & Schlegel, P.C.
Of Counsel to the Firm
627 North 4th Street, P.O. Box 902
Reading, PA 19603-0902
610-372-5588

Attorney for Olivet Boys & Girls Club
John M. Stott, Esquire
Brumbach, Mancuso & Fegley, P.C.
50 N. 5th St., 4th Floor, P.O. Box 782

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610-376-7351

Attorneys for the American Heart Association,
William R. Blumer, Esquire and
Alan G. Leisawitz, Esquire
Leisawitz Heller Abramowitch Phillips, P.C.
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610-372-3500

Attorneys for American Cancer Society, Commonwealth Division and Berks County Association for the Blind
C. Thomas Work, Esquire
Stevens & Lee
111 North Sixth Street
P.O. Box 679
Reading, PA 19603-0679
610-478-2084

Attorney for Alvernia College,
Thomas M. Golden, Esquire
Golden ♦ Masano ♦ Bradley
1100 Berkshire Blvd., Suite 201
Wyomissing, PA 19610
610-372-7700

Attorney for Co-Trustee, CoreStates Financial Corp.
Edwin H. Rouh, Esquire
1735 Market Street, Room 193-0205
Philadelphia, PA 19101
215-553-3071

Attorney for the Commonwealth of Pennsylvania, Charitable Trust Section,
Lawrence Barth, Esquire
Commonwealth of PA, Office of the Attorney General
Charitable Trust Section
21 South 12th Street, Third Floor
Philadelphia, PA 19107
717-772-8579

Dale Ashcroft, pro se, Paul W. Christ, pro se, Samuel Yeager pro se, Grace Fisher, pro se, Wesley Fisher, pro se, Jesse Ashcroft, pro se, Melinda Ashcroft, pro se, Doris Fisher, pro se, St. Paul's U.C.C., pro se

I served as one of the co-counsels on a complex Will and trust contest. This litigation involved a Will contest filed by the decedent's niece and nephew who were to receive smaller specific bequests under decedent's Will than they were under a prior Will of the decedent, with the remainder of the estate being placed in a residuary trust of which the charities were remainder beneficiaries. After trial, the Honorable Peter W. Schmehl approved a compromise settlement offer proposed by the charities. The charities involved which included my client, Alvernia College, successfully were able to obtain their proposed gifts from the trust which had been established under the Will. The charities with the concurrence of the Attorney General of Pennsylvania believed they were entitled to an outright share of the Trust rather than having it administered at more cost and expense. The Pennsylvania Superior Court affirmed the Order issued in favor of the charities by the Orphans Court, which was of great benefit to our client, Alvernia College and to the other charities involved.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

Through the years I have been involved in numerous arbitration and mediation cases. Most recently I have served in two very significant matters. First, as a mediator/arbitrator of a dispute between a major law firm and its client relating to the way in which the law firm handled a matter. I was able to satisfactorily resolve the problem between the parties. In the other, I served as an arbitrator in a multi-million dollar contract claim relating to the sale of a business. It was a complex matter, requiring numerous hearings and ultimately adjudication. Also, since 2004 I have been a hearing officer for the Disciplinary Board of the Supreme Court of Pennsylvania. In this position I preside over evidentiary hearings relating to disciplinary charges against attorneys.

Other legal matters of significant importance handled by me include the complex sale of a business to a publicly held corporation for in excess of $40,000,000 and serving as college counsel to Alvernia College. A small college is

like a small city and it gives rise to all types of legal questions. It is a wonderful and challenging experience and one in which the lawyer must have a wide background of experience to be able to render advice and counsel. The legal matters include, but are not limited to, business, real estate, labor and litigation.

Throughout my career as a lawyer, I've always believed that participation in the Bar Association is important. I have been privileged to be selected by my peers to hold any number of important leadership positions in both the local and state bar associations. Obviously, the most significant of those has been as President of the Pennsylvania Bar Association, which is a 29,000 member voluntary bar. In my role as President, I was involved in all aspects of the profession and the legal system. We created programs for the benefit of the profession, the general public and the legal system in general. Our association has been a leader in providing pro bono services and programs. For example, I created a task force to address loan forgiveness for public service lawyers who are burdened by debt problems arising from obtaining their undergraduate and law school degrees. In addition, I dealt with all types of serious issues facing the profession. Suffice it to say that I have a thorough understanding of the legal profession and the dynamics that affect it in today's world. As a result of my work with the Bar Association, I have been honored and privileged to be selected by the Supreme Court of Pennsylvania to chair its Continuing Legal Education Committee. Pennsylvania has mandatory continuing legal education for its lawyers and the Board, which I chair, is given responsibility for creating and monitoring this legal education system. Many other states have used our procedures as a model and, without a doubt, we provide a valuable service to the general public by insuring the level of competency of lawyers is enhanced through current legal education.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

The only future compensation will be the amount to be paid for my law firm partnership interest. The amount to be paid cannot be determined until my date of withdrawal is known.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

During my initial service, I will be particularly sensitive to possible conflicts of interest arising from former clients or parties represented by my former law firm. In adopting any procedure to resolve potential conflicts of interest, it is my intention to err on the side of caution. It is my belief that an impartial judiciary is an extremely important element of American government. As cases are assigned to me, I will review the identity of the parties to determine whether or not I have any connection to the party whatsoever, any financial interest, or any other possible conflict or appearance of conflict. In all circumstances, I will comply with the Code of Conduct for United States Judges, and all applicable statutes, policies and procedures.

3. **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.

4. **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, patents, 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.

5. **Please complete the attached financial net worth statement in detail**

See Attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

During my thirty-two (32) years of practice I have served on many dinner and reception committees for events which raised money for many candidates. Those candidates include, but are not limited to: Presidents Ronald Reagan, George H. W. Bush and George W. Bush, United States Senator Arlen Specter, United States Senator Rick Santorum, Pennsylvania Attorney General Leroy K. Zimmerman, Pennsylvania Attorney General Michael Fisher, United States Congressman James Gerlach and many local candidates. In only two instances did I serve as an officer. I was the Financial Chairman of the Berks County Republican County Committee and I also served as the Treasurer for the election campaign of Samuel Caltigirone, for Mayor of the City of Reading. Both of those offices were held in the mid 1980's.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Golden, Thomas M	U.S. Eastern District Ct of PA	1/27/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
U. S. District Judge - Nominee	(•) Nomination, Date 1/25/2006 ( ) Initial ( ) Annual ( ) Final	1/1/2005 to 12/31/2005
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1100 Berkshire Boulevard Suite 201 Wyomissing, PA 19610	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Managing Partner	Golden Masano Bradley
2.	President, Officer, Member Board of Governors	Pennsylvania Bar Association
3.	Director	Pennsylvania Bar Foundation
4.	Advisory Board Member	National Penn Bank
5.	Co-Trustee	Trust #1
6.	Executor	Estate #1
7.	Chairman	Pennsylvania Supreme Court Continuing Legal Education Committee
8.	Advisory Board Member	Pennsylvania for Modern Courts
9.	Trustee	Pennsylvania Bar Insurance Fund & Trust
10.	Director	Pennsylvania Bar Institute
11.	Director	Lawyers Concerned for Lawyers, Inc.
12.	Co-Trustee	401(K) Profit Sharing Plan #1
13.	Co-Trustee	Trust #2

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

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2005	Golden Masano Bradley law firm 401(K) Profit Sharing Plan

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Golden, Thomas M	1/27/2006

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

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
2.	2006	Golden Masano Bradley purchase agreement of law firm interest (terms not completed)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Golden, Thomas M	1/27/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2006	Golden Masano Bradley	16,673.
2.	2005	Golden Masano Bradley	326,100.
3.	2004	Golden Masano Bradley	335,671.
4.	2005	National Penn Bank - advisory board fees	650.
5.	2004	National Penn Bank - advisory board fees	600

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Golden, Thomas M	1/27/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Cardmember Svcs	credit card	J
2.	Bank of America	credit card	J

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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g div rent or int)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e g buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. US Allianz Alterity annuity		None	K	T	Exempt				
2. National Penn Bancshares, Inc. - common stock	D	Dividend	M	T					
3. Sovereign Bancorp Inc. - common stock	A	Dividend	L	T					
4. Brokerage Account #1									
5. - Cash/Money Market Fund/Bank Deposits	A	Interest	M	T					
6. - Erie PA - municipal bonds		None	K	T					
7. - Bethlehem Center School District PA - municipal bonds		None	K	T					
8. - Oley Valley PA School District - municipal bond		None	K	T					
9 401(K) account - #1		None	N	T					
10. - Russell Life Bal Str (D) Sep Account		None							
11. - Principal Money Mkt Sep Acct		Interest							
12. - Principal Bond and Mortgage Sep Acct		Interest							
13 - Prin Ptr Lg-Cap Value Sep Acct		Dividend							
14. - Prin Ptr Md-Cap Gr II Sep Acct		Dividend							
15. - Prin Sm Cap Stk Idx Sep Acct		None							
16. - Prin Ptr Lg-Cap Growth I Sep Acct		Dividend							
17 - Prin Ptr International Sep Acct		Dividend							
18. - Principal Financial Group, Inc - stock		Dividend							

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

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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e g div rent or int)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e g buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date. Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. - Amer Cent Ultra (Adv) Sep Acct		Dividend							
20. - Fid Adv Mid Cap Sep Acct -		Dividend							
21. - Principal Sm Co Blend Sep Acct		Dividend							
22. IRA - account #1	C	Dividend	M	T					
23. - Liquid Asset Fund		Interest							
24. - Altria Group Inc - common stock		Dividend							
25. - Apache Corp - common stock		Dividend							
26. - Arrow Intl Inc - common stock		Dividend							
27. - Conocophillips - common stock		Dividend							
28. - Drill-Quip Inc - common stock		Dividend							
29. - Exxon Mobil Corp - common stock		Dividend							
30. - Guidant Corp - common stock		Dividend							
31. - Johnson & Johnson - common stock		Dividend							
32. - Kraft Foods Inc Cl A		Dividend							
33. - Lucent Technologies - common stock		Dividend							
34. - Morgan Stanley - common stock		Dividend							
35. - Sovereign Bancorp Inc - common stock		Dividend							
36. - Tyco International LTD New - common stock		Dividend							

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

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. - Wachovia Corp 2nd New Com - common stock		Dividend							
38. - AXA ADS - common stock		Dividend							
39. IRA - account #2	C	Dividend	M	T					
40. - Liquid Asset Fund		Interest							
41. - Altria Group Inc - common stock		Dividend							
42. - Apache Corp - common stock		Dividend							
43. - Arrow Intl Inc - common stock		Dividend							
44. - Conocophillips - common stock		Dividend							
45. - Drill-Quip Inc - common stock		Dividend							
46. - Guidant Corp - common stock		Dividend							
47. - Johnson & Johnson - common stock		Dividend							
48. - Kraft Foods Inc Cl A		Dividend							
49. - Lucent Technologies - common stock		Dividend							
50. - Morgan Stanley - common stock		Dividend							
51. - Sovereign Bancorp Inc - common stock		Dividend							
52. - Tyco International Ltd New - common stock		Dividend							
53. - Wachovia Corp 2nd New Com - common stock		Dividend							
54. - AXA ADS - common stock		Dividend							

1. Income/Gain Codes. (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2 Value Codes. (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
55. - Cox Radio Inc CL-A		Dividend							
56. Inherited IRA - account #3	E	Dividend	O	T					
57. - Cash & Equivalents		Interest							
58. - Baxter Intl CV Pfd 7% - preferred stock		Dividend							
59. - Ford Cap Trust II Conv Pfd - preferred stock		Dividend							
60. - Travelers Property CV PFD 4.5% - preferred stock		Dividend							
61. - Argon St Inc - common stock		Dividend							
62. - Allied Capital Corporation - common stock		Dividend							
63. - Amsouth Bancorp - common stock		Dividend							
64. - Bank of America Corp - common stock		Dividend							
65 - Key Corp - common stock		Dividend							
66. - National City Corp - common stock		Dividend							
67. - Washington Mutual - common stock		Dividend							
68. - Waste Management Inc - common stock		Dividend							
69. - General Electric - common stock		Dividend							
70. - Black & Decker Corp - common stock		Dividend							
71. - Coast Distribution Services - common stock		Dividend							
72. - Chromcraft Revington Inc - common stock		Dividend							

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2. Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e g. div rent. or int)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e g buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
73. - Fortune Brands Inc - common stock		Dividend							
74. - Centex Corp - common stock		Dividend							
75. - KB Home - common stock		Dividend							
76 - MDC Holdings Inc - common stock		Dividend							
77. - Standard Pacific Corp - common stock		Dividend							
78. - Biloxi Marsh Lands Corp - common stock		Dividend							
79. - Chevron Corp - common stock		Dividend							
80. - Conocophillips - common stock		Dividend							
81 - Dawson Geophysical Co - common stock		Dividend							
82 - Devon Energy Corp - common stock		Dividend							
83. - Oil States Intl - common stock		Dividend							
84. - Johnson and Johnson - common stock		Dividend							
85. - Gorman-Rupp Co - common stock		Dividend							
86. - 21st Century Holding Co - common stock		Dividend							
87. - Donegal Group Inc Cl A - common stock		Dividend							
88. - National Security Group - common stock		Dividend							
89. - TJX Companies Inc - common stock		Dividend							
90. - Hewlett-Packard Co - common stock		Dividend							

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

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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
91 - International Paper - common stock		Dividend							
92 - Anadarko Petroleum Corp - common stock		Dividend							
93. - McDonalds Corp - common stock		Dividend							
94. - American Int'l Group - common stock		Dividend							
95. - Hooker Furniture Corp - common stock		Dividend							
96. - M/I Homes Inc - common stock		Dividend							
97. - Velcro Industries - common stock		Dividend							
98. - Cigna Corp - common stock		Dividend							
99. - Allstate Corporation - common stock		Dividend							
100. - Alliance Gaming - common stock		Dividend							
101. - Cisco Systems Inc - common stock		Dividend							
102. - Deere & Co - common stock		Dividend							
103. - Devon Energy Corp - common stock		Dividend							
104. - Masco Corp - common stock		Dividend							
105. - Doral Financial - common stock		Dividend							
106 - Whirlpool Corp - common stock		Dividend							
107. - Bel Fuse Class B-		Dividend							
108 National Penn Bank - account	B	Interest	M	T					

1 Income/Gain Codes. (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
109. Sovereign Bank - account	A	Interest	K	T					
110. Golden Masano Bradley - partnership interest	D	Interest	M	U					
111. National Penn Bank - Golden Masano Bradley ptr accounts		None	N	W					
112. Sovereign Bank - Golden Masano Bradley ptr account		None	K	T					
113. AXA Equitable - whole life policy	A	Dividend	J	T					
114 AXA Equitable - whole life policy	A	Dividend	J	T					
115. MetLife - flexible premium life policy	B	Interest	K	T					
116. MetLife - flexible premium life policy	A	Interest	K	T					
117. Trust #1 - Co-Trustee	A	Dividend	K	T					
118. - National Penn Bank Cash Management		Interest							
119. - Artisan International Fd-Inv - common stock		Dividend							
120. - Excelsior Value & Restructuring Fund		Dividend							
121. - Harbor Capital Appreciation Fund		Dividend							
122. - Mairs and Power Growth Fund, Inc		Dividend							
123. - Pimco Total Return Fund		Dividend							
124. - Western Asset Core Plus Bond Portfolio		Dividend							
125. 401K Account #1 - Co-Trustee		None	P1	T					
126. - Principal Financial Group -Guaranteed Interest Accounts		Interest							

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

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Name of Person Reporting	Date of Report
Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date, Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
127. - Principal Money Mkt Sep Account		Interest							
128. - Principal Bond and Mtg Sep Acct		Interest							
129. - Alliance LgCap Value Sept Acct		Dividend							
130. - Mason St Hi YD Bd (A) Sep Acct		Dividend							
131. - Principal Lg Cap Stk Idx Sep Acct		Dividend							
132. - Principal U.S. Property Sep Acct		Dividend							
133. - Principal Med Co Value Sep Acct		Dividend							
134. - Russ Life Agg Str (D) Sep Acct		Dividend							
135. - Russ Life Bal Str (D) Acct		Dividend							
136. - Russ Life EqAg St (D) Sep Acct		Dividend							
137. - Russ Life Mod Str (D) Sep Acct		Dividend							
138 - Fidelity Md-Cp Gr II Sep Acct		Dividend							
139. - Principal Mid-Cap Stk Idx Sep Acct		Dividend							
140. - Principal Sm-Cap Stk Idx Sep Acct		Dividend							
141. - T. Rowe Price LgCap Growth I Sep Acct		Dividend							
142. - Fidelity Intl Sep Acct		Dividend							
143. - Prin Fin Grp Inc Stk Sep Acct		Dividend							
144. - Principal LifeTm 2010 Sep Acct		Dividend							

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
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Golden, Thomas M	1/27/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
145. - Principal LifeTm 2020 Sep Acct		Dividend							
146 - Principal Life Tm 2030 Sep Acct		Dividend							
147. - Prin Ptr Lg-Cap Value Sep Acct		Dividend							
148. - Prin Ptr Lg-Cap Gr I Sep Acct		Dividend							
149. - Princ Ptnr Md-Cp Gr II Sep Acct		Dividend							
150 - Prin Ptr International Sep Act		Dividend							
151. - Prin Ptr Lg-Cap Bld I Sep Acct		Dividend							
152. - Prin Ptr Lg-Cap Blend Sep Acct		Dividend							
153. - Prin Stock Emph Bal Sep Acct		Dividend							
154. - Russ Life Con Str (D) Sep Acct		Dividend							
155. - Amer Cent Ultra (Adv) Sep Acct		Dividend							
156. - Fid Adv Mid Cap Sep Acct		Dividend							
157. - INVESCO Leisure Sep Acct		Dividend							
158. - Principal Lg Co Grwth Sep Acct		Dividend							
159. - Principal Med Co Blnd Sep Acct		Dividend							
160. - Principal Med Co Gr Sep Acct		Dividend							
161. - Prin Ptr Sm-Cap Blend Sep Acct		Dividend							
162. - Principal Sm Co Blend Sep Acct		Dividend							

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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163. - Principal Sm Co Grwth Sep Acct		Dividend							
164. Estate #1 - Executor									
165. - Sovereign Bank - account		None							

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Golden, Thomas M	1/27/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

1) Part I, page 1, Line 6, Estate #1 - A minimal distribution was made for the benefit of the sole beneficiary on January 26, 2005 to close the estate checking account and close the administration of the estate. The account did not receive any interest, nor were there any fees paid in 2005.

2) Part I, page 1, line 9 - Uncompensated to serve as one of several Trustees of a Trust Fund of the Pennsylvania Bar Association to promote education and charitable purposes associated with the legal profession and the administration of justice, with particular reference to the promotion of such purposes in the Commonwealth of Pennsylvania.

3). Part I. Page 1, line 13, Trust #2 - Unfunded life insurance trust. Co-Trustees are not compensated.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Golden, Thomas M	1/27/2006

IX. CERTIFICATION.

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

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

Signature Thomas M. Golden Date Jan 27, 2006

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		240	953	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		326	989	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		23	968
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance		75	170				
Other assets itemize:							
Partnership Interest		150	000				
Annuity and Retirement Accounts	1	367	097				
				Total liabilities		23	968
				Net Worth	2	686	241
Total Assets	2	710	209	Total liabilities and net worth	2	710	209
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts		53	908	Are you defendant in any suits or legal actions?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax		24	000				
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities:	
SOV	$53,077.00
NPBC	205,541.00
Erie PA Genl – municipal bonds	23,466.00
Bethlehem Center Sch Dist PA – municipal bonds	22,788.00
Oley Valley PA Sch Dist – municipal bonds	22,117.00
Total Listed Securities	326,989.00
Real Estate Owned:	
Personal residence	$400,000.00
Other Assets Itemized:	
US Allianz – annuity	$36,976.00
401(K) account #1 – Principal Financial Group-Golden Masano Bradley 401(K) Profit Sharing Plan	307,858.00
IRA account #1 – Morgan Stanley	151,362.00
IRA account #2 – Morgan Stanley	131,185.00
Inherited IRA account #3 – Charles Schwab	739,716.00
Total Other Assets	1,367,097.00
Contingent Liabilities:	
Disclosure Statement on Lease or Contracts: my law firm currently has several leases which have various remaining terms and Contingent liabilities as follows:	
Office space lease – expires 11/30/07	$179,209.59
Storage space lease – expires 5/06	484.00
Total Contingent Liabilities	179,693.59
Partnership interest	30%
Prorated share of Contingent Liabilities	$53,908.00

III. GENERAL (PUBLIC)

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

Early in my career as a lawyer, I served as pro bono counsel to children in proceedings brought by Berks County Children and Youth Services Agency. I handled numerous cases where I represented the child in proceedings to determine the proper resolution of family problems relating from abuse to neglect. Throughout the years, I have served many times as pro bono counsel through the Berks County Bar Association Pro Bono Program and handled any number of minor matters for financially disadvantaged people. They have ranged from landlord-tenant to small claim collections.

In recent years due to my duties with the Pennsylvania Bar Association, I have not handled pro bono cases, but have instead elected to contribute annually to the Berks County Bar Association which in turn donates the money to Mid-Penn Legal Services to help to defray the costs of providing pro bono services. In my role as a President of the Pennsylvania Bar Association I have been a strong advocate for pro bono activities and have supported and advocated programs to provide funding for the rendering of pro bono services.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

At the present time, I do not hold membership in any organization that discriminates on the basis of race, sex or religion. While in college I was a member of Sigma Alpha Epsilon Fraternity at Pennsylvania State University, which is a social fraternity and does not admit women. I am also a member of Endlich Law Club, a social legal society composed of members of the Berks County Bar Association.

Years ago it did not admit women and I was one of the members that effectuated a change in voting procedures which ended that practice and it now has no membership requirements or policies which discriminate. I was a member of Maidencreek Fish and Game Club, which is a social male organization, for trap shooting and dining. It does not admit women. I resigned from that organization on May 10, 2005.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is a selection commission for the jurisdiction which recommended my nomination for the vacancy. The initial notice of a vacancy was published in the Berks County Law Journal in the form of an advertisement for qualified candidates to apply to the Commission for the vacancy which existed on the United States Eastern District Court of Pennsylvania. I submitted the Federal Judicial Nomination Commission of Pennsylvania Personal Data Questionnaire for Lawyer Application on May 2, 2005. I appeared before that Commission on May 11, 2005 and was selected as a recommended candidate. Subsequently, on May 24, 2005, I was interviewed by representatives of the White House Counsel Office and the United States Department of Justice. I had further interviews with Senator Arlen Specter and Senator Rick Santorum on June 22, 2005. I was advised by the White House in September of 2005 that I would be considered for nomination. After completing nomination paperwork and after a background investigation, the President submitted my name to the Senate on January 25, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has

become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this judicial activism have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our system of government is based on constitutional principles of separation of powers and checks and balances. The form of government that exists in the United States was designed such that the democratic process would predominate over the judicial process. The role of the Court, or any individual judge, is not to promote a particular ideology, rather, it is the Court's role to decide individual cases in a pragmatic way that permits political branches to shoulder the responsibility of governing society.

The role of a judge is to be the impartial arbiter of a case between disputing parties, applying the law to the facts as he or she finds them. The source of law shall be provided to the judge through the form of statutes, codes or regulations developed through the political process or through respect of and adherence to prior judicial decisions. The judge should be making these decisions regardless of who the party is before the Court.

It is clearly not the role of the judiciary to use the plight of an individual party as a vehicle to create far-reaching orders extending to broad classes of individuals. The risk inherent in doing so is that the judge abandons his

or her role as a member of the judiciary, and assumes the role and responsibilities of the legislative branch.

The proper administration of justice requires the judiciary to demonstrate impartiality, legal and analytical skill, and responsibility to authoritative sources. In the event that a member of the judiciary exceeds these responsibilities, that individual is exceeding his or her scope of authority.

A member of the judiciary is, of course, human. As a result, there certainly will be times where the judge will feel a certain element of empathy towards a party or dispute proceeding before him or her. Nevertheless, the impartiality required by the judiciary requires the judge to exercise an element of self-restraint that will set aside those feelings of empathy and decide the case, as the law requires. This is not only expected of our judiciary, it is demanded of our judiciary.

AFFIDAVIT

I, THOMAS M. GOLDEN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 10, 2006
(DATE)

Thomas M. Golden
(NAME)

Jo Ann Dowling
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JO ANN DOWLING, NOTARY PUBLIC
BOROUGH OF WYOMISSING, BERKS COUNTY
MY COMMISSION EXPIRES OCT. 10, 2009

Senator DEWINE. Mr. Golden, thank you very much.
Mr. Barrett, good morning.

STATEMENT OF MICHAEL RYAN BARRETT, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

Mr. BARRETT. Mr. Chairman, good morning. I would just like to express my—

Senator DEWINE. Hit your mike there, Mr. Barrett.

Mr. BARRETT. Is it on now? Thank you. I am sorry.

Mr. Chairman, I would just like to express my deepest gratitude to you and Senator Voinovich for the remarks you made and also for just providing the opportunity to even be here today. I greatly appreciate it from the bottom of my heart, and I would like to thank the President for the nomination.

Thank you.

[The biographical information Mr. Barrett follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   ANSWER: MICHAEL RYAN BARRETT

2. **Address: List current place of residence and office address(es).**

   ANSWER: Residence: Cincinnati, Ohio

   Office: 105 East Fourth Street, Suite 500
   Cincinnati, Ohio 45202

3. **Date and place of birth.**

   ANSWER: January 14, 1951, Cincinnati, Ohio

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   ANSWER: Divorced

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   ANSWER: Wabash College (1969-1970)
   University of Cincinnati (1970-1974), Bachelor of Arts Degree (1974)
   University of Cincinnati College of Law (1974-1977), Juris Doctor (1977).

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

ANSWER: *Compensated*:

Camp Kooch-I-Ching
National Camping & Education Foundation
Counselor (June, 1974 - August, 1974)

State of Ohio Administrative Hearing Officer (July, 1977 - January, 1978)

Hamilton County Prosecutor's Office, Hamilton County, Ohio (February 1, 1978 - February 28, 1984)

Graydon, Head & Ritchey (March, 1984 - December 1994)

Barrett & Weber (January, 1995 - Present)

American Financial Corporation, Special Committee Director (April, 2003 - November, 2003)

Hamilton County Board of Elections (March, 2000 - September, 2005)

Volunteer:

Hamilton County Republican Party Chairman (February, 2001 - July, 2005)
Served on the Board of Trustees, University of Cincinnati from February, 1993 through January, 2002. One term as Chairman
Served on the Board of Trustees of Health Alliance of Greater Cincinnati from March 30, 1999 through December, 2000.
Past Trustee of Mercy Anderson Foundation
Past Trustee of Children's Services of Hamilton County, Ohio
Current Chairman of the Board of Overseers of the Rivercity Correction Center of Hamilton County, Ohio
Current member of the Board of Trustees of Talbert House
Current Trustee of the Charles P. Taft Memorial Fund
Current Director of Boys Hope/Girls Hope of Cincinnati

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

ANSWER: No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

ANSWER: Doctor of Humane Letters, University of Cincinnati, 2002
Outstanding Service Award as a Mediator, United States District Court for the Southern District of Ohio, Western Division
Best Lawyers in America, 1991 - 1996
Ohio Super Lawyers, 2004, 2006

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

ANSWER: Cincinnati Bar Association, Current member
National Association of Criminal Defense Lawyers, Current Member
Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline (1996-2001)
Member of the Ohio Judicial Review Commission (Federal Court) (1997)
Past Board Member of the Center of Dispute Resolution
Past Member of Cincinnati Community Action Now ("CAN"), Police and Justice Committee Co-Chair (2001 - 2003). CAN was a community based action committee to study the 2001 disturbance in the City of Cincinnati and implement substantive programs to assist minorities in various areas of endeavor.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

ANSWER: I belong to no organizations that are active in lobbying before public bodies. Other organizations to which I belong are the Commonwealth Club, Queen City Club, Cincinnati Country Club and the St. Martin's Association.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

ANSWER: Ohio State Bar, admitted 1977, Member in good standing.
United States District Court, Southern District of Ohio, admitted 1981, Member in good standing.
United States Court of Appeals for the Sixth Circuit, admitted, 1987, Member in good standing.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

ANSWER: N/A

13. **Health: What is the present state of your health? List the date of your last physical examination.**

ANSWER: I am in good health. My last physical was December 1, 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

ANSWER: None

15. Citations: **If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.**

ANSWER: N/A

16. Public Office: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

ANSWER: Chairman, Hamilton County Republican Party (Elected by Republican Central Committee) February 13, 2001 to July, 2005.

Member of the Hamilton County Board of Elections (Appointed) March, 2000 to September, 2005 (Compensated position).

17. Legal Career:

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

1. **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;**

ANSWER: No.

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

ANSWER: No.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

ANSWER:

7/1977 - 1/1978	State of Ohio	30 E. Board Street Columbus, Ohio 43215	Administrative Hearing Officer
2/1978 - 2/1984	Hamilton County Prosecutor's Office	230 East Ninth St. Cincinnati, Ohio 45202	Assistant Prosecutor-Chief Asst. Felony Trial Division
3/1984 - 12/1994	Graydon, Head & Ritchey	511 Walnut Street Cincinnati, Ohio 45202	Associate Attorney-Partner
1/1995 - Present	Barrett & Weber	105 East 4th Street Cincinnati, Ohio 45202	Shareholder - Attorney

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

ANSWER: I began my career in the Administrative Hearing Officer position immediately after the State Bar Examination in July of 1977. The State of Ohio had recently restructured its job description and classification manual resulting in the classification or re-classification of all State employees. As a result of this process, any State employee who was dissatisfied with his/her job classification had the right to an administrative hearing to determine the appropriateness of the hiring authorities' determination. A group of approximately 30 hearing officers conducted hearings in State offices and institutions throughout Ohio. Most of the work was concluded by early January, 1978.

Thereafter, I became an Assistant Prosecuting Attorney for the Hamilton County Prosecutor's Office. I was assigned to the Felony Trial Division where I participated in the investigation, grand jury presentation and trial of felonies. In January, 1983 I was promoted to a Chief Assistant of the Felony Trial Division. My duties consisted of all of the aforementioned but were expanded to include authority and approval of plea bargains,

case assignment, lead counsel in major cases and supervision of assistant prosecuting attorneys assigned to the Felony Trial Division.

After leaving the Hamilton County Prosecutor's Office I joined the law firm of Graydon, Head & Ritchey as an associate and later became a partner of the firm. I worked in the litigation department on both civil and criminal matters.

After ten years at Graydon, Head & Ritchey, I joined Barrett & Weber where I continue to practice today in the same areas of law.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER: My clients in the criminal defense practice covered the entire spectrum of the criminal code with a concentration in the white collar crime area. My civil litigation clients have been both existing business clients of the firms and transactional complex litigation clients.

In the mid 1980's I began to spend a significant amount of time in the domestic relations area and was listed several times in *Best Lawyers in America* for the domestic relations practice in Hamilton County, Ohio.

Recently, I have been involved in a number of securities cases representing both individual Plaintiffs and/or the Attorney General's Office for the State of Ohio.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

ANSWER: Throughout my entire career, court appearances have been routine occurrences whether for pre-trial conferences, motion practice or trial. My time in the Prosecutor's Office was one hundred percent criminal but since that time I have always had a combination of criminal and civil litigation.

2. What percentage of these appearances was in:

(a) federal courts;

ANSWER: 5%

(b) state courts of record;

ANSWER: 90%

(c) other courts.

ANSWER: 5% (Mayor's courts, etc.)

3. What percentage of your litigation was:

(a) civil;

ANSWER: 40%

(b) criminal.

ANSWER: 60%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

ANSWER: 10 as chief counsel or co-lead counsel
40 as sole counsel
10 as associate counsel

5. **What percentage of these trials was:**

(a) jury;

ANSWER: 80%

(b) non-jury.

ANSWER: 20%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

ANSWER:

A. *State v. Michael Beuke* (1983, Hamilton County Case No. B832526), 38 Ohio St.3d 29, 526 N.E.2d 274, I was first chair in this capital (death penalty) case of Carrying Concealed Weapon, Aggravated Robbery, Aggravated Murder, Attempt to Commit Aggravated Murder and Kidnapping involving three separate victims. This case was tried in Hamilton County Court of Common Pleas before the Honorable Norbert Nadel and I was assisted by the Honorable Robert Ruehlman. The defendant was represented by Joseph G. Carr and Merlyn D. Shiverdecker.

Honorable Robert Ruehlman
Court of Common Pleas, Hamilton County
1000 Main Street, Room 300
Cincinnati, Ohio 45202
(513) 946-5850

Joseph G. Carr
817 Main Street, Suite 200
Cincinnati, Ohio 45202
(513) 651-5651

Merlyn D. Shiverdecker
817 Main Street, Suite 200
Cincinnati, Ohio 45202
(513) 651-5651

The Michael Beuke matter became known as the "Hitchhiker Homicide" case in the media as Beuke lured victims into helping him by hitchhiking with a gasoline can on various interstates and roadways around the Greater Cincinnati area. The Defendant, once given a ride by the victims, would produce his firearm and then force the victims to drive to various locations, throughout Hamilton County and Clermont County. He was eventually apprehended on his way to trap a fourth victim. Beuke executed one victim, forever paralyzed another from the waist down, and shot the third victim in the face. This case was a media-intensive trial and resulted in a conviction as charged and the imposition of the death penalty. This was a multi-

jurisdictional crime but Hamilton County took the lead. Preparation required close work with the FBI and various Hamilton and Clermont County law enforcement personnel.

B. *State v. Russell Bell* (1978, Hamilton County Case No. B7802129B, First District Court of Appeals, Hamilton County, Ohio, Case No. C-790181). Bell was charged with Escape, Attempted Aggravated Robbery, Attempted Murder and Aggravated Murder. This capital case was tried before a three-judge panel consisting of the Honorable Thomas Crush, Robert Gorman and Thomas Nurre of the Hamilton County Court of Common Pleas. I served as second chair to the Honorable Fred J. Cartolano who was then the first assistant prosecuting attorney. Russell Bell was defended by Leslie Isaiah Gaines and William Cunningham.

Honorable Fred J. Cartolano
Court of Common Pleas, Hamilton County
1000 Main Street, Room 310
Cincinnati, Ohio 45202
(513) 946- 5840

Leslie Isaiah Gaines
1200 American Building
Cincinnati, Ohio 45202
(513) 241-2540

William D. Cunningham
Katzman Logan Halper & Bennett
9000 Plainfield Road
Cincinnati, Ohio 45236
(513) 793-4400

Russell Bell and a co-defendant, Wayne Reed, were casing an all-night convenient store for a potential robbery when the clerk became suspicious and phoned the police. They left the location and proceeded to speed away with Russell Bell driving and Wayne Reed in the passenger seat. They were pulled over for questioning shortly thereafter by police officer Charles Burdsall and a civilian observer. When Officer Burdsall exited his vehicle, Reed exited the suspect vehicle from the passenger side and fired shots at the officer, killing him. Bell and Reed escaped setting off an intensive manhunt, which lasted for several days. The pair were eventually apprehended. Wayne Reed was convicted by a jury. In the case that I worked on Russell Bell was convicted of Aggravated Murder of a Law Enforcement Officer and was sentenced to death by the three-judge panel.

C. *State v. Randal Ayers* (1982, Hamilton County Case No. B820102). This case was tried before the Honorable Thomas H. Crush. I served as second chair to Carl Vollman in an Attempted Aggravated Murder, Rape and Kidnapping by Randy Ayers. This was a highly publicized and emotional case involving the conviction by jury and sentencing of Randy Ayers who was defended by R. Scott Croswell and Elizabeth Agar.

Carl W. Vollman
Loeb Vollman & Friedmann, LLP
1450 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202
(513) 922-6571

R. Scott Croswell, III
Croswell & Adams
Olde Sycamore Square
1208 Sycamore Street
Cincinnati, Ohio 45202
(513) 241-5670

Elizabeth E. Agar
Croswell & Adams
Olde Sycamore Square
1208 Sycamore Street
Cincinnati, Ohio 45202
(513) 241-5670

Randall Ayers was a young adult who was charged in the brutal rape and attempted murder of a young girl. Because of his lifestyle, Ayers was unable to account intelligently for his whereabouts and activities at the time of the crime. Strong circumstantial evidence led the police to him and the victim later identified him as her assailant. The trial resulted in a conviction and incarceration. Several years later another defendant who was jailed in Kentucky confessed to the crime. The same investigating officers were dispatched to the prison, interviewed that person, tested his credibility and became convinced that he was the true assailant. A review of his mug shot from several years earlier bore a dead-ringer resemblance to Ayers' photographs at the time of crime. Ayers was released from prison and received pecuniary compensation from the County but an innocent man had gone to jail as a result of a case I prosecuted.

D. *State v. Edward Sukol, et al.* (1985, Hamilton County Case No. B-8500883). The Honorable Thomas H. Crush heard this case which was prosecuted by Thomas P. Longano and the Honorable Heather Stein Russell. I was lead defense counsel for Edward Sukol assisted by Marc Kurzman The other defendants were represented by Joseph Carr, Thomas W. Miller and Arnold Morelli.

Joseph P. Carr
817 Main Street, Suite 200
Cincinnati, Ohio 45202
(513) 651-5651

Thomas W. Miller (deceased)
1700 Fourth & Vine Tower
One West Fourth Street
Cincinnati, Ohio 45202
(513) 241-3050

Arnold Morelli
6507 Mariemont
Cincinnati, Ohio 45227
(513) 271-8559

Thomas P. Longano
First Assistant Prosecuting
Attorney, Hamilton County Prosecutor's
Ohio
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

(513) 946-3213

Honorable Heather Stein Russell
Hamilton County Municipal Court
1000 Main Street
Cincinnati, Ohio 45202
(513) 946-5133

Marc G. Kurzman
Kurzman Law Office
Minneapolis, Minnesota

This case involved charges of multiple purported victims and several defendants wherein it was alleged that my client, the primary Defendant, as Director of a day camp participated in and permitted other workers to engage in sexual activity with minor children. This was a major case and the first case in Hamilton County involving issues of memory implantation and the use of children's advocates in the Courtroom to assist the children in the presentation of their testimony to a jury.

Mr. Sukol was the director of a Jewish day camp in Hamilton County and was accused of participating, along with other counselors, in sexual activity involving young female campers. My client steadfastly maintained his complete innocence and refused a misdemeanor plea even though facing a possible life sentence. This case required a month to try and resulted in the acquittal of all Defendants. I believe the record on this case was sealed.

E. *Davis, et al. v. The Mutual Life Insurance Company of New York, et al.* (1989 Case No. C-1-87-727, S.D. Ohio) 6 F.3d 367, 1993 U.S. App. LEXIS 24254. This case was tried by the Honorable S. Arthur Speigel in the United States District Court for the Southern District of Ohio, Western Division. I represented the defendant company as first chair in this multi-plaintiff case involving multi-million dollar allegations that Mutual of New York permitted a salesperson to systematically defraud policyholders. The Honorable Timothy S. Black served as second chair. This case involved civil RICO counts, fraud claims and breach of contract claims. After approximately a month of trial, Plaintiffs obtained a verdict against my client in the amount of several million dollars. The plaintiffs were represented by Michael Florez and William Blessing.

Honorable Timothy S. Black
United States District Court
Southern District of Ohio, Western Division
Potter Stewart US Courthouse
100 East Fifth Street, Room 216
Cincinnati, Ohio 45202
(513) 564-7640

Michael G. Florez
119 East Court Street,
Suite 501

William H. Blessing
119 East Court Street,
Suite 500

Cincinnati, Ohio 45202
(513) 977-4777

Cincinnati, Ohio 45202
(513) 621-9191

F. *The United States v. Leonard Pelullo*, (1991, Case No. CR-91-60, United States District Court, Eastern District of Pennsylvania), 105 F.3d 117, 1997 U.S. App. LEXIS 311. This case was tried in Philadelphia, Pennsylvania before the Honorable Robert Kelly. I participated as second chair to Glenn V. Whitaker in the defense of Leonard Pelullo who was charged with criminal RICO, fraud and money laundering, in a fifty plus count indictment. After a month of trial, the defendant was convicted. The United States was represented by Ronald G. Cole.

Glenn V. Whitaker
Vorys Sater Seymour and Pease
2000 Atrium Two
221 East Fourth Street
Cincinnati, Ohio 45202
(513) 723-4608

Ronald G. Cole
Office of the US Attorney
Philadelphia, Pennsylvania

G. *State of Ohio v. Joseph Hochbein* (November, 2000, Hamilton County, Case No. B-0003365) This case was tried in the Hamilton County Court of Common Pleas before the Honorable Fred J. Cartolano. I was co-lead counsel with Glenn V. Whitaker defending Joseph Hochbein who was then Mayor of the City of Norwood, Ohio against allegations involving theft and illegal reporting and/or expenditures of campaign finances. This case was assigned to Special Prosecutors, David Parker and William G. Fowler and proceeded to a trial by jury.

Glenn V. Whitaker
Vorys Sater Seymour and Pease
2000 Atrium Two
221 East Fourth Street
Cincinnati, Ohio 45202
(513) 723-4608

David N. Parker (deceased)
2525 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202
(513) 421-6556

William G. Fowler
Fowler & Cole
301 Lebanon Bank Building
Lebanon, Ohio 45036
(513) 932-7444

At the end of the State's case, the Court dismissed much of the indictment pursuant to Defendant's Rule 29 Motion and at the conclusion of the Defendant's case, a plea bargain was reached wherein Mayor Hochbein pled to one Fourth Degree Misdemeanor for a technical accounting violation on his finance reports and the Court publicly stated that there was no evidence of intentional wrongdoing on the part of the Mayor. Mr. Hochbein was able to retain his position in politics as a result.

H. *State of Ohio v. J.B. Williams, Jr.* (1987, Hamilton County Case No. B8700023). This matter was tried in the Hamilton County Court of Common Pleas before the Honorable Norbert Nadel and was prosecuted by the Honorable Melba Marsh and Lee R. Slocum.

Honorable Melba D. Marsh
Court of Common Pleas
330 Hamilton County Courthouse
1000 Main Street
Cincinnati, Ohio
(513) 946-5866

Lee R. Slocum
Assistant Hamilton Cty.
Prosecutor, Hamilton
County Prosecutor's Ofc.
230 East Ninth Street,
Suite 4000
Cincinnati, Ohio 45202
(513) 946-3088

Mark S. Krumbein
2020 CBLD Center
36 East Seventh Street
Cincinnati, Ohio 45202
(513) 241-4480

I was lead counsel in the defense of J.B. Williams with Mark Krumbein assisting, against allegations that Williams and a co-defendant summarily executed two individuals in the course of a robbery/drug transaction. Both J.B. Williams and the co-defendant were charged with capital offenses which could have resulted in the death penalty. After conclusion of the jury trial, a verdict was returned acquitting Mr. Williams of one of the homicides and finding him guilty of the reduced charge of murder on the other homicide, thus sparing him exposure to the death penalty.

This case was an important experience for me as I had successfully prosecuted death penalty cases and this was the defense of a capital case.

I. *Oscar Siuda, et al v. David G. Howard, M.D., et al* (April 29, 1998, Court of Common Pleas, Hamilton County, Ohio, Case No. A-9802378). This consolidated case was tried before the Honorable Robert Ruehlman. I was lead co-counsel for the Plaintiffs with Stanley M. Chesley and Jane Walker of Waite, Schneider, Bayless & Chesley. The defendants were represented by Michael F. Lyon and David P. Kamp.

Stanley M. Chesley
Jane Walker
Waite Schneider Bayless & Chesley
1513 Fourth & Vine Tower
One West Fourth Street
Cincinnati, Ohio 45202
(513) 621-0267

Michael F. Lyon
Lindhorst & Dreidame
312 Walnut Street, Suite 2300
Cincinnati, Ohio 45202
(513) 421-6630

David P. Kamp
White Getgey & Meyer
1700 Fourth & Vine Tower
Cincinnati, Ohio 45202
(513) 241-3685

This matter involved a complex multi-plaintiff, multi-claim medical malpractice action resulting in a significant jury verdict following weeks of trial. Plaintiffs succeeded in recovering compensatory and punitive damages, attorneys fees and pre-judgment interest. Plaintiffs' claims arose out of allegations that Dr. David G. Howard and his medical practice routinely performed unnecessary eye surgeries for financial benefit. This case is important both at the trial level and as an appellate decision insofar as punitive damages in a medical malpractice action, significant attorney fees, and significant pre-judgment interest are rarely awarded much less upheld on appeal.

J. *Mary Patrick Latham v. The Office of the Attorney General of the State of Ohio, et al.*, (Case No. 1:99-CV-0032, S.D. Ohio; 6th Cir. Court of Appeals, Case No. 03-3830, January 10, 2005, 395 F.3d 26, Rehearing *en banc* denied by 2005 U.S. App. LEXIS 5629, *cert. denied* by 126 S. Ct. 420). Latham brought this action on January 19, 1999 against the Office of the Ohio Attorney General claiming that its termination of her employment violated both her First Amendment rights and the anti-retaliation provisions of the Age Discrimination in Employment Act of 1967 ("ADEA"). I argued the case before the United States District Court for the Southern District of Ohio which granted summary judgment in favor of the defendants on both claims and before the United States Court of Appeals for the Sixth Circuit on September 21, 2004 which sustained the District Court's ruling. The Court determined that because Latham's position is properly viewed as a "confidential or policymaking" position, she was barred from recovering damages against the State under the First Amendment and that the States cannot be sued under the ADEA in Federal Court without consent as set forth in the Eleventh Amendment. This was a crucial case for the Ohio Attorney General's office as the Sixth Circuit's application of *Rose v. Stephens*, 291 F.3d 917 (6th Cir., 2002) to assistant attorney generals is of great import in personnel decision making and office management. The Plaintiff had requested a hearing *en banc* before the United States Court of Appeals for the Sixth Circuit, which hearing was denied. Plaintiffs filed a Petition for Writ of Certiorari before the Supreme Court of the United States, which was denied on October 11, 2005. I represented the Office of the Ohio Attorney General and Plaintiffs were represented by Marc Mezibov and Christian Jenkins.

Marc D. Mezibov
Christian A. Jenkins
Mezibov & Jenkins, LLP
1726 Young Street
Cincinnati, Ohio 45202
513-723-1600

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

I was appointed in February, 1997 as Special Master/Trustee of the Lucasville Class Action lawsuit, *In Re: Southern Ohio Correctional Facility*, Civil Action No. C-1-93-436, United States District Court, Southern District of Ohio, Western Division, 166 F.R.D. 391. This appointment was made by the Honorable S. Arthur Spiegel. My duties involved the analysis of over 900 claims, responses thereto and the allocation of settlement funds as determined by individual claims awards.

On March 6, 2001 I was appointed Receiver in the case of *Securities and Exchange Commission v. Stephen G. Donahue, et al*, Civil Action No. C-1-01-116, United States District Court for the Southern District of Ohio, Western Division. This appointment was made by the Honorable Sandra Beckwith. My duties included working with counsel for the collection and liquidation of any remaining assets in order to make investors whole.

Community Action Now ("CAN") was a multi-faceted project that was formed by and among corporate, cleric, legal and civic leaders in the aftermath of the disturbance in Cincinnati in April, 2001. I served as co-chair of the Police and Justice Committee which dealt with judicial and legal issues. This panel consisted of the aforementioned stakeholders as well as law enforcement and judicial representatives. The panel convened on a regular basis over many months and eventually accomplished a diversion program for offenders in the City of Cincinnati and an expungement project for eligible offenders involved in the disturbance itself. The panel also made observations and recommendations in other areas of the judicial system resulting in implementation of programs such as a housing court project.

The Cincinnati Center for the Resolution of Disputes grew out of the impetus for litigants to solve issues by means other than expensive litigation. As an early Board member I worked as liaison with the Common Pleas Court to introduce mediation as a viable alternative to arbitration and/or trial.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

ANSWER: I have a retirement plan from Graydon, Head & Ritchey maintained through the Fifth Third Bank. I have accumulated retirement benefits at Barrett & Weber and the Public Employees Retirement System through the Hamilton County Board of Elections.

Barrett & Weber has on-going business relationships with a number of clients, some of whom I have performed direct services for, and some for whom I have not. I am also co-counsel in litigation matters with several other attorneys which should produce future revenues for our firm. Upon my resignation from Barrett & Weber, I would receive my capital stock contribution and would negotiate any other appropriate termination benefits or buy-out of accounts.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

ANSWER: In the event of a potential conflict, I would follow the Code of Conduct for United States Judges, applicable statutes, established rules and guidelines. I would identify all matters which are pending in the Southern District of Ohio in which any lawyer of my prior firm is counsel of record. I would then notify the Chief Judge for the Southern District of Ohio of any and all matters which may present actual or potential conflicts of interest. I believe that the appropriate way to deal with any associations, holdings or benefits not covered by the above that may impact upon particular litigation, is to fully disclose the issues to the parties and, where appropriate, be governed by their concerns or lack of concern as to the issue.

3. **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.**

ANSWER: No.

4. **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, patents, 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.)**

ANSWER: Please see attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

ANSWER: Please see attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

ANSWER: As Chairman of the Hamilton County Republican Party, I was involved in numerous local and state elections as well as the 2004 Presidential election. I was generally involved in fundraising, speeches, rallies and grass-roots efforts.

I served as Finance Chairman for Congressman Steve Chabot in his 1994 campaign in the First District of Ohio. In accordance with local custom, my name has been listed on the finance committee masthead for various county campaigns.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2004

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

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
BARRETT, MICHAEL R.	UNITED STATES DISTRICT COURT OHIO - SOUTHERN	12/19/05

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
DISTRICT JUDGE	X Nomination, Date 12/16/05 ___ Initial ___ Annual ___ Final	1/1/04 - 11/30/05
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
105 East Fourth Street, Ste. 500 Cincinnati, Ohio 45202	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	Shareholder	Barrett & Weber, LPA
2	Partner	Old Walnut Company
3	Board Member (former)	Hamilton County Board of Elections

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

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	1994	Graydon, Head & Ritchey Retirement Plan with former law firm, no control
2	1995	Barrett & Weber LPA, Profit Sharing Plan and 401K upon retirement at age 65 or upon termination
	1995	Barrett & Weber LPA, 15 shares non-interest bearing-funds upon termination

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
☐	**NONE** (No reportable non-investment income.)		
1	2005	Barrett & Weber, LPA	$ 106,420 YTD
2	2005	Hamilton County Board of Elections	13,520 YTD
	2004	Barrett & Weber, LPA (including bonus)	$ 695,446
3	2004	Hamilton County Board of Elections	19,823
	2003	Barrett & Weber, LPA	$ 174,184

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

X	**NONE** (No reportable non-investment income.)	
1		
2		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BARRETT, Michael R.	12/19/05

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1		
2	Exempt	
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1			
2	Exempt		$
3			$
4			$
			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BARRETT, Michael R	12/19/05

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-59 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets,									
1 US Bank accounts	A	int.	K	T	Exempt				
2 US Bank accounts cust.	A	int.	N	W					
3 US Bank acct. agency	C	div.	N	W					
4 Abbott Labs									
Cintas Corp.									
5 Hospira, Inc.									
First Am. Treasury									
6 A.G. Edwards - custodial	C	int.	L	W					
7 US Bank acct. foundation	C	int.	K	W					
8 MFS Heritage Trust IRA	B	int.	K	W					
9 Old Walnut Company	D	int.	N	W					
10 Fifth Third Bancorp stock	E	div.	O	W					
11 Procter & Gamble stock	C	div.	M	W					
12 Graydon Head & Ritchey	E	div.	M	W	-				
13 Barrett & Weber 401K	E	div.	M	W					
14 Columbus Life Ins.		None	J	W					
15 Western Southern LIfe		None	J	W					
16 J.M. Smucker Co. stock	A	div.	J	W					
17 Huntington Bank stock	A	div.	J	W					

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes:	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BARRETT, Michael R.	12/19/05

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-59 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
18 St. Martin Association		None	J	W					
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BARRETT, Michael R.	12/19/05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

II. **AGREEMENTS:**

2000 Public Employes Retirement System - Pension upon retirement at age 65

III. **NON-INVESTMENT INCOME:**

2003	Hamilton County Board of Elections	$ 27,914
2003	American Financial Corp. - Special Director's Fee	$ 53,000

IX. CERTIFICATION.

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

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

Signature Michael R. Barrett Date December 19, 2005

MICHAEL R. BARRETT

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	38	061	71	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1,190	896	00	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	7	500	00
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	54	800	00	Chrysler Finance - Auto Loan	13	000	00
Cash value-life insurance	10	519	79	US Bank - Auto Loan	25	650	00
Other assets itemize:							
See attached schedule	1,215	572	88				
				Total liabilities	46	150	00
				Net Worth	2,463	700	38
Total Assets	2,509	850	38	Total liabilities and net worth	2,509	850	38
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
On leases or contracts				Are you defendant in any suits or legal actions?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT SCHEDULES:

LISTED SECURITIES:

Fifth Third Bank Stock		$ 686,500.00
Procter & Gamble Stock		238,900.00
J.M. Smucker Co. Stock		250.00
US Bank Agency Account		
Abbott Labs	$ 74,917.00	
Cintas	6,169.50	
Cash Transfer from Personal Checking Acct.	50,000.00	
Hospira, Inc.	8,128.20	
First American Treas. Obligations Fund	126,031.30	
	$265,246.00	265,246.00
		$1,190,896.00

GENERAL INFORMATION SCHEDULE:
Assets Pledged: Auto Loan secured by personal vehicle

FINANCIAL STATEMENT:
OTHER ASSETS:

MFS Heritage Trust IRA		$ 18,700.00
Old Walnut Company		399,000.00
Graydon, Head & Ritchey Retirement Plan		207,780.00
Barrett & Weber Retirement Plan		102,950.00
Public Employees Retirement System - Pension Plan		14,091.30
St. Martin Association		5,000.00
Miscellaneous, Art, Furniture, Jewelry, Firearms		100,000.00
US Bank Custodial Account for Son, William Barrett		
First American Large Capital Value Fund	$ 27,936.86	
First American Med. Capital Value Fund	12,863.50	
First American Large Capital Growth	12,510.93	
Cintas	6,169.50	
First American Treasury	75,887.98	
	$135,368.77	135,368.77
A.G. Edward Custodial Account for Son, William Barrett		98,723.62
Custodial Stocks for Son, William Barrett		
Motorola	$ 4,788.00	
Cincinnati Bell	738.00	
CMS Energy	1,480.00	
First Data	4,358.00	
Convergys	4,900.00	
Bank of America Corp.	15,421.00	
Cintas	41,000.00	
US Bank Corp.	15,000.00	
Walt Disney Corp.	250.00	
	$ 87,935.00	87,935.00
US Bank Michael R. Barrett Foundation		46,024.19
Total Other Assets		$ 1,215,572.88

III. GENERAL (PUBLIC)

1. **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.**

ANSWER: Over the years, from time-to-time, I have provided services to disadvantaged persons or performed work on a pro bono basis. For a period of time in private practice, I accepted Public Defender assignments for felony cases and handled one capital case (*State v. J.B. Williams*), one murder case (*State v. Dwight Collins,* 1984, Hamilton County Case No. B8403708), and several others. These were not *pro bono* cases but compensation was at a substantially reduced rate. At Graydon, Head & Ritchey, we participated in Volunteer Lawyers for the Poor ("VLP"). On a pro bono basis, most recently, I was involved in the examination, development, identification and implementation of an expungement process to seal the conviction records of eligible offenders who were charged with non-violent crimes resulting from the disturbance in the City of Cincinnati in April of 2001. This was a time-consuming and labor-intensive project for which I did not keep track of the hours. I have spent more of my time over the years involved in community activities and Boards, some directly related to the law (Supreme Court of Ohio Board on Grievances and Discipline, Board member; Center for the Resolution of Disputes; RiverCity Correctional Center; Children's Administrative Services; and Talbert House) as well as others related to traditional, charitable/civic activities (Mercy Foundation; Boys Hope/Girls Hope; Charles P. Taft Memorial Fund and the University of Cincinnati Board of Trustees).

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

ANSWER: From approximately 1975 through 2005 I belonged to the Friendly Sons of Saint Patrick in Cincinnati, Ohio, which is a social group of males of Irish descent. I am no longer a member. The Friendly Sons of Saint Patrick is not discriminatory but is male only.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

ANSWER: After media reports of the then-seated District Court Judge's intent to move to Senior status, the Ohio Senators' Offices published deadlines for Notice of Intent to seek appointment to the position of District Judge. Thereafter, I submitted my Notice of Intent to seek the appointment for the District Court vacancy and received a request for a resume. Either simultaneously or thereafter, I submitted responses to a questionnaire. I was later interviewed by a Committee appointed by the Ohio Senators and sometime after the Committee interview I met with the Ohio Senators individually, at their respective offices in Washington, D.C. Thereafter, my name was submitted by the Ohio Senators to the White House. I was interviewed by staff of the White House counsel's office and the Department of Justice. After completing the nomination paperwork and a background investigation, I was informed that the President would nominate me. My nomination was sent to the Senate on December 16, 2005.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.**

ANSWER: No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: Much has been written about judicial activism and I believe that the largest problem facing the American judiciary today is an understanding of what a judge's role should be. Judges have to understand the clearly defined distinction between the role of the judiciary and the role of the legislature. I believe that it is the role of the judge to follow the statutes when they are clear and understandable and, when they are not, to apply authority and precedent to the matter at hand. Private individuals, corporate parties, criminal defendants and victims are entitled to a certain amount of predictability which is achieved by the fair application of the law to the facts in controversy. The parties understand and can appreciate this fairness when the courts adhere to the appropriate statute or common law precedents when reviewing their case.

While the Court has no control over which cases are properly filed before it, judges should be mindful to adjudicate only the claims and defenses the parties present in the pleadings. It is not the Court's role to solve the problem of litigants in a global fashion, but, rather, to apply the relevant statutory and constitutional provisions and case law to the facts of a particular case fairly and impartially. In other words, a judge must follow established legal precedent and authority. Having viewed judges from every possible perspective in litigation – representing civil plaintiffs and defendants, prosecuting and defending criminal matters, and acting as a special master and receiver in Federal Court – I recognize that restraint is a key part of a judge's responsibility. Applying the law, with fairness and appropriate restraint, to the facts of a particular case is a constant challenge because judges are human. But it is a challenge that judges must meet day after day. A Judge must recognize that the American public's confidence in the judiciary is at stake every time he or she dons the robe and that such confidence depends on his or her ability, day after day, to apply the law fairly and impartially.

AFFIDAVIT

I, **MICHAEL RYAN BARRETT**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 13, 2006
(DATE)

Michael Ryan Barrett
(NAME)
MICHAEL RYAN BARRETT

Stephanie Kaye Bowman
(NOTARY)

NOTARIAL SEAL
STATE OF OHIO

STEPHANIE KAYE BOWMAN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Senator DEWINE. Mr. Cogan?

STATEMENT OF BRIAN M. COGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Mr. COGAN. Senator DeWine, thank you for chairing this hearing this morning. I would echo my colleagues and express my appreciation to the President for the confidence he has shown in me in putting my nomination forward. My wife is here with me today. Senator Schumer I think has adequately introduced her.

And I also wanted to thank the people from the Department of Justice and the FBI for the professionalism and efficiency they showed throughout the background investigation that led to us being here today.

Thank you.

[The biographical information of Mr. Cogan follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Brian Mark Cogan

2. Address: List current place of residence and office address(es).

Residence: Brooklyn, New York

Office:
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038

3. Date and place of birth.

Date: April 22, 1954
Place: Chicago, Illinois

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married
Maiden Name of Wife: Robin Elizabeth Keller
Occupation of Spouse: Attorney
Employer's name and address:
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Cornell Law School, 8/76 to 5/79, J.D. (1979)
University of Illinois, 8/73-5/74 and 1/75 to 12/75, B.A. (1976)
Chinese U. of Hong Kong, 9/74 to 12/74, no degree
University of Iowa, 8/72 to 5/73, no degree

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1980 to Present, Stroock & Stroock & Lavan LLP, associate (1980-88); partner (1988); General Counsel (2004)
1979-1980, United States District Court for the Southern District of Florida (law clerk - Judge Aronovitz)
1978-1979, Cornell Law School, Research Assistant
Summer 1978, Stroock & Stroock & Lavan LLP, Summer Associate
1976, Grossinger Pontiac, Inc., Sales Assistant

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have no federal military service. However, I am presently a commissioned officer (Major, O-4, Judge Advocate branch) in the New York Guard, a sister service to, but distinct from, the New York National Guard. This is a volunteer (unpaid) position. I was commissioned on Feb. 7, 2002.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

I have a number of awards, decorations, and certificates from federal and state military services for my work as a volunteer (unpaid) New York Guard JAG Officer, including certificates of appreciation from 353rd Civil Affairs Command; NYS Defense of Liberty Medal; NYS Meritorious Service Medal; NYG Commendation and Achievement Medals.

My firm also maintains a well-recognized pro bono program, known as The Pro Bono Project, for which I received an award as a result of my volunteer work with enlisted soldiers.

In law school, I received the Gustavus Hill Robinson Moot Court Award for Best Third Year Argument, and was a member of the Board of Editors of the Cornell Law Review.

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Treasurer, Federal Bar Foundation, 1997-2003
Secretary, Subcommittee on Rule 11 of the Section of Litigation, American Bar Association, about 1984
Hearing Officer, Disciplinary Committee, Supreme Court, First Judicial Department, 1998-2004
Vice-Chairman, Mayor's Committee for the Appointment of City Marshals, approximately 1986-1994
Member, Respect For Law Alliance
Member, Federal Bar Council
Member, Association of the Bar of the City of New York, service at various times on Federal Courts Committee; International Law Committee; and currently on Military Law Committee
Member, International Bar Association
Member at various intermittent times of ABA, Federalist Society, New York State Bar Association, possibly New York County Lawyers Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, none of the organizations to which I belong is active in lobbying before public bodies. In addition to those previously listed, I belong to the following organizations:

New York Guard Association
American Museum of Natural History
Brooklyn Botanical Garden
New York Pinewoods Folk Music Club for many years.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New York Bar (Third Department), October 14, 1980

Florida Bar, October 24, 1980 (presently have non-resident exemption status)
United States District Court, Southern District of New York, December 23, 1980
United States District Court, Eastern District of New York, January 20, 1981
United States District Court, Northern District of New York, August 24, 1994
United States District Court, Western District of New York, March 27, 1997
United States Court of Appeals for the Second Circuit, April 19, 1984
Supreme Court of the United States, October 10, 1989
United States Court of Appeals for Third Circuit, October 23, 1998
United States District Court, District of Connecticut, March 29, 1999
United States District Court, Northern District of Texas, October 6, 1999
United States District Court, Northern District of Illinois, October 4, 2004

No memberships have lapsed in any of the above courts.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

(a) Too Late for "Never Mind": Supreme Court Nevertheless Reverses Conviction of Arthur Andersen; Corporate Governance Advisor; September/October 2005

(b) Bankruptcy Code Impact on Civil Litigation in the Federal Courts, in Business and Commercial Litigation in Federal Courts; 2d Edition, Haig ed., Thomson West 2005

(c) Practice Before the Commercial Division, in Commercial Litigation in New York State Courts, 2d Edition, Haig ed.; Thomson West 2005

(d) Recent Developments in European Insolvency Law And the 'Foreign Proceeding' Requirements of Bankruptcy Code Section 204: Potential Consequences for UK Collective Administration Proceedings; International Bar Association Section on Business Law; April 2004

(e) Recent Developments in Ancillary Proceedings in the US Bankruptcy Courts; International Bar Association Section on Business Law, Committee J News (co-author: Christopher R. Donoho and Claude G. Szyfer); September 2003

(f) Mid-Life Military Service; Federal Bar Council News; April 2002

(g) Attorneys Face Liability for Client's Asset Transfers (co-author: Joel Cohen); New York Law Journal; October 2, 2001

(h) Federal Bankruptcy Law Primer For State Court Judges; NY Office of Court Administration; Summer 2001

(i) Lessons from the Grupo Mexicano and Credit Agricole Cases; International Legal Strategy; December 2000

(j) The Judiciary: N.Y. Senatorial Candidate Rick Lazio Speaks with FBC News About Judicial Appointments (co-author: Claude Szyfer); Federal Bar Council News; October 2000

(k) Asset Freezing Injunctions in a Global Capital Market; New York Law Journal; May 3, 2000

(l) United States Federal Courts: No Longer Available to Compel Discovery in Connection with Non-United States Arbitrations (co-author: David Sifre); The Arbitration and Dispute Resolution Law Journal; December 1999

(m) Break The Bankruptcy Barrier (co-author: Lewis Kruger); ABA Law Journal; March 1999

(n) Federal Rule of Civil Procedure 65: Common Law Remedy for Preference; New York Law Journal; July 7, 1998

(o) Ancillary Proceedings Under the United States Bankruptcy Code: Rights and Remedies of Japanese Bankruptcy Administrators (co-author: Robin E. Keller); International Legal Strategy; 1998

(p) Liquidator Beware: Judicial Admission as Sword and Shield (co-author: Lewis Kruger and Lawrence Norden); Mealey's Insurance Insolvency Reports; July 1997

(q) Proceedings Ancillary to Foreign Proceedings of Insolvency Insurers and the McCarran-Ferguson Act: In re Laitsalo (co-author: Susheel Kirpalani); Int'l Ins. L. Rev.; 1996

(r) Tort and Contract Issues For Incoming Partners; New York Law Journal; July 5, 1995

(s) A Matter of Timing - When And How to Raise An Issue In A Chapter 11 (co-author: Curtis M. Mechling); The Metropolitan Corporate Counsel; January 1995

(t) Borrowers Have Gained Leverage in Bankruptcies (co-author Robin E. Keller); American Banker Opinion; November 30, 1993

(u) Expanded Jury Trial Rights in Bankruptcy (co-author: Robin E. Keller); New York Law Journal; May 1993

(v) The Entity Theory of Partnership and the Proposed Revisions to the Uniform Partnership Act; Ass'n Bar of the City of New York; June 1991

(w) Automatic Stay of the Bankruptcy Code: Applicability to Third Party Guaranties of Debtor's Obligations; Stroock & Stroock & Lavan Letter on Banking Law and Regulation; November 29, 1990

(x) Product Liability (co-author: Joseph Forstadt and Jay P. Mayesh); C. Heyel & B. Menkus; 1986

(y) The Case Against Recognition of a General Academic Privilege (co-author: David Kaplan); U.Det. J.Urban L.; 1983

I have not given speeches on constitutional law or legal policy. I have given lectures on various legal practice topics noted in answer to Question 19 below. These lectures were given from notes or extemporaneously, without any prepared text.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in excellent health. My last physical exam was conducted on April 4, 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never served as a judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Hearing Officer, Departmental Disciplinary Committee of the Appellate Division, First Department, Supreme Court of the State of New York, appointed 1998, served through 2004.

Vice-Chairman, Mayor's Committee on the Appointment of City Marshals, appointed 1986, served through 1994.

17. **Legal Career:**

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

1. 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;

1979-1980: Law Clerk to Hon. Sydney M. Aronovitz (deceased), United States District Judge, Southern District of Florida.

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

I have never practiced alone.

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

1980-present: Litigation attorney, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038. Associate to 1988; Partner from 1988-present. Appointed General Counsel to the Firm, 2004.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I have specialized in complex commercial litigation, mostly civil although sometimes with parallel criminal proceedings. Many of my cases are high-profile securities fraud, accountants' liability, or international cases, which frequently arise out of the financial collapse, often through fraud although sometimes through ordinary business distress, of substantial companies. By way of examples, I have previously represented the liquidators of BCCI, the Creditors Committee of Wedtech, and the United Kingdom Department of Trade and Industry in asset-recovery actions; and I

have had several substantial representations arising out of Enron's collapse.

Except for a few years early in my career doing products liability defense, the nature of my practice has not changed from that described above, except that the cases have become more complicated, the stakes higher; and my role eventually became lead counsel some years ago.

In 2004, I was appointed General Counsel of the Firm, which means I became the in-house lawyer for a firm of 350 lawyers. I accepted this position on condition that its responsibilities would be in addition to, and not in lieu of, my regular clients and caseload. My primary responsibilities in this position include providing advice to insure appropriate, ethical resolution of conflict matters; counseling partners and associates on professional standards of conduct and risk management; advice on human resources issues; and litigation involving the Firm.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients for the most part have tended to be well known financial institutions and large consulting and professional firms, and I usually interface with senior management or general counsel at those companies. In addition, I have represented and continue to represent a number of middle-market, closely-held service companies, usually in the context of partnership/LLC disputes.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have always appeared in court frequently. I would estimate on average that I appear once a week.

2. What percentage of these appearances was in:
(a) federal courts: 60%
(b) state courts of record: 30%

(c) other courts: 10% (arbitrations)

3. **What percentage of your litigation was:**
   (a) civil: 100%
   (b) criminal.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

Over the course of my career, I would estimate that I have tried about a dozen cases to judgment. I am including evidentiary hearings in that number. I have been chief counsel in most of these.

5. **What percentage of these trials was:**
   (a) jury: 95%
   (b) non-jury: 5%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

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

I functioned as lead counsel in all cases below, with chief responsibility for briefing, trial, or argument, unless specifically noted otherwise.

1. Credit Agricole Indosuez v. Rossiyskiy Kredit Bank, 94 N.Y.2d 541, 708 N.Y.2d 726 (2001). I represented the sixth largest Russian bank, Rossiyskiy Kredit Bank, the debtor in a $200 million bond default based on the collapse of the Russian ruble. The New York Court of Appeals sustained my argument that the Supreme Court's decision in Grupo Mexicano de Desarrollo v. Alliance Bond Fund, 527 U.S. 308, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999), which was based on federal law, should also be accepted as a matter of New York law. The issue in both cases was whether an asset-freezing cross-border injunction could be issued in an action at law, and both the Supreme Court in Grupo and the New York Court of Appeals in this case held that it could not. The case was settled shortly after the decision. I was lead counsel, arguing it before the trial court and the Appellate Division, and briefing it to the New York Court of Appeals. However, due to a scheduling conflict, my partner delivered the argument before the Court of Appeals.

Contact information of other parties' counsel:

Grant McCrea, Esq.
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, New York 10019-6092
Telephone: 212-212-259-8000

2. Bayerische Hypo-Und Vereinsbank v. Banca Nazionale Del Lavoro, S.p.A., 292 B.R. 752 (Bankr. S.D.N.Y. 2003). This case arose out of the Enron Bankruptcy, a dispute between two banks as to who was responsible for an Enron credit risk. The lengthy decision by Bankruptcy Judge Gonzalez addressed both letter of credit law and the allocation of responsibility between an issuing and participant bank under a 100% participation agreement. An earlier decision was also significant, addressing the ability of a plaintiff that commenced an action in state court to subsequently remove its own action based on federal bankruptcy jurisdiction. I represented the plaintiff, Bayerische Hypo-Und Vereinsbank, had removal sustained, and received summary judgment for $39 million in favor of my client. The matter is currently on appeal but the defendant has satisfied the judgment.

Contact information of other parties' counsel:

Michael Lambert, Esq.
Gilmartin, Poster & Shafto LLP
845 Third Avenue
New York, New York 10022
Telephone: 212-425-3220
Facsimile: 212-425-3130
Email: mclambert@lawpost-nyc.com

3. Santini v. Alexander Grant & Co., 272 A.D.2d 271, 708 N.Y.S.2d 97 (1st Dep't 2000). This was an accountants' liability action in which the plaintiff sought to hold its auditor liable for $50 million on the theory that plaintiff's former President had deliberately used improper accounting techniques, and the auditor allegedly should have have stopped him. I was able to establish on summary judgment that there was not enough evidence to raise an issue of fact in support of plaintiff's theory, and I successfully defended the judgment on appeal.

Contact information of other parties' counsel:

Charles Strugatz, Esq.
Strugatz & Laquercia LLP
291 Broadway, 16th Floor
New York, NY 10007
(212) 227-3333

4. In re R.M. Kliment & Frances Halsband, Architects (McKinsey & Co., Inc.), 3 N.Y.3d 538, 821 N.E.2d 952, 788 N.Y.S.2d 648 (2004). This case involved the interpretation of a legislative amendment to the New York statute of limitations governing professional liability claims which, in this case, involved architectural services. I represented McKinsey & Co., Inc., having taken over for prior counsel, which, as the New York Court of Appeals ruled, had failed to timely file the claim. The issue was sufficiently close that the Court of Appeals granted discretionary leave to appeal, which is analogous to a grant of certiorari by the U.S. Supreme Court. Although we did not prevail, pursuit of the argument was necessary to demonstrate mitigation of damages for a claim against prior counsel. Following the decision, the client was able to settle the malpractice claim against prior counsel.

Contact information of other parties' counsel:

Lawrence Gainen, Esq.
Ingram Yuzek Gainen Carroll & Bertolotti, LLP
250 Park Avenue
New York, NY 10177
Telephone: (212) 907-9633
Facsimile: (212) 907-9681
Email: lgainen@ingramllp.com

5. Wall Street Systems, Inc. v. Lemence, 2005 WL 292744 and 2005 WL 214330 (S.D.N.Y. 2005). This was a dispute involving a minority member of a closely-held software development firm concerning his compensation, in which I represented the plaintiff corporation. Successful resolution was essential to my client, Wall Street Systems, to enable it to secure venture capital. Judge Rakoff ruled in my favor, rejecting fraud and contract claims, on all but a small portion of the claims. These remaining, minor claims were set down for trial, but the rulings facilitated a favorable settlement.

Contact information for other parties' counsel:

Ned Branthover, Esq.
Abelman, Frayne & Schwab
10th Floor
666 Third Avenue
New York, NY 10017-5621
Telephone: (212) 949-9022
Facsimile: (212) 949-9190
Email: nwbranthover@lawabel.com

6. Landgray Associates v. 450 Lexington Venture, L.P., 788 F.Supp. 766 (S.D.N.Y.), aff'd mem., 986 F.2d 499 (2d Cir. 1992). This was one of the few cases in the late 20th Century dealing with adverse possession, and the only one in English or U.S. legal history dealing with adverse possession of a light and air easement. I represented the plaintiff, a real estate developer seeking to build in the burdened airspace, and tried the case before Judge Miriam Cedarbaum. She ruled that the easement had been adversely possessed, and I successfully defended that ruling in the Second Circuit. The result of the judgment was construction of the office tower that currently sits atop the U.S. Post Office at 45th St. and Lexington Avenue and houses, among other things,the offices of Davis Polk & Wardwell.

Counsel for other parties:

Kathy S. Marks, Esq.
Kay Gardiner, Esq.
Assistant U.S. Attorneys
100 Church Street
New York, New York
Telephone : 212-637-2200

Marcia E. Kuznetz, Esq.
Wien Malkin & Bettex
60 E. 42nd Street
New York, New York 10165
Telephone: 212-687-8700

7. Pension Benefit Guaranty Corp. v. LTV Corp., 875 F.2d 1008 (2d Cir. 1989), rev'd, 496 U.S. 633 (1990). I argued this appeal on behalf of the Official Creditors Committee of the LTV Corp. in the Second Circuit. The issue was the ability of a Chapter 11 debtor to reject its pension plans under the Bankruptcy Code. My client and its co-defendants prevailed at all lower court levels but the Supreme Court (where I did not appear) reversed.

Counsel for other parties:

Karen Wagner, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
Telephone: 212-450-4000

Carol Connor Flowe, Esq.
Pension Benefit Guaranty Corporation
2020 K Street, N.W.
Washington, D.c. 20006
Telephone: 202-778-8820

8. In re Chateaugay Corp., 944 F.2d 997 (2d Cir. 1991). I argued this appeal in the Second Circuit on behalf of the Official Creditors Committee of LTV Corp. It remains the leading authority on discharge and allowance of environmental claims under Chapter 11.

Counsel for other parties:

Karen Wagner, Esq.
Davis Polk & Wagner
450 Lexington Avenue
New York, New York 10017
Telephone: 450-4000

Richard Mark, Esq.
Department of Investigation
80 Maiden Lane
New York, New York 10038
Telephone: 212-825-5900

9. National Westminster Bank USA v. Century Heathcare Corp., 885 F.Supp. 601 (S.D.N.Y. 1995). I tried this $30 million lender liability claim on behalf of the Bank before the late Judge Milton Pollack, who granted a directed verdict in my client's favor.

Counsel for other parties:

Stephen E. Powers, Esq.
Warshaw, Burstein, Cohen, Schlesinger & Kuh
555 Fifth Avenue
New York, New York 10017
Telephone: 212-984-7700

10. Zissimatos v. U.S. Trust Co. of New York,10 A.D.3d 587, 781 N.Y.S.2d 897 (1st Dep't 2004). I represented a group of insurance company investors that had invested $200 million in a Greek shipping enterprise, only to have the loan go into default several months after it was made, allegedly because the financial statements on which the loan was based were fraudulent. More than five years after the insurance companies liquidated their collateral (a fleet of cargo ships), receiving only a fraction of their investment back, the plaintiff, who was the equity owner of the shipping companies, commenced a lender liability action, contending that the lenders had committed acts of international piracy in seizing the ships and had abused the sailors who were manning them. I succeeded in having the case dismissed by Justice Carla Moskowitz for lack of standing on the ground that the

borrower shipping companies (which had been dissolved) would have been the only proper plaintiffs, not the equity owner of those companies. The Appellate Division affirmed, and the Court of Appeals denied leave to appeal.

Contact information of other counsel:

Andrew Muscato
Skadden Arps
Four Times Square
New York,NY 10036
(973)639-6817

Mary Ann Marlowe, Esq.
Keane & Marlowe LLP
197 Route 18, Suite 3000
East Brunswick, NJ 08816
Telephone: 732-951-8300
Facsimile: 732-951-2005

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Answer:

A. From 1998-2004, I served as a Panel Hearing Officer for the Departmental Disciplinary Committee, First Department, of the Appellate Division, Supreme Court, State of New York. This is the body in New York that recommends attorney disciplinary action to the Court for ethical violations. In performing these duties, I reviewed and made recommendations on hundreds of files of alleged attorney misconduct, and sat on approximately one dozen hearing panels, resulting in recommendations to the Appellate Division.

B. I have written and lectured extensively on legal subjects related to my practice. I am the author (in one case, co-author) of two chapters in different Thomson-West publications which are among the leading authorities on their respective subjects, "The

Impact of the Bankruptcy Code in Federal District Courts," and "Practice Before The Commercial Division of the Supreme Court of New York." I annually lecture at the New York City Bar Association on "Enforcing Judgments"; and prior to that, I lectured at that same venue on "Taking Depositions." I have also lectured on international litigation and cross-border injunctions.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only potential payment I may have is a possible pension from Stroock & Stroock & Lavan LLP when I turn the appropriate age (I don't know if that is 59 ½ or 65). The plan is "unfunded" and I understand it is questionable whether I will have any entitlement when I reach the appropriate age.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated, should I be confirmed, include any matter in which my firm appears as a party or as attorneys, or cases involving clients that I have represented.

In resolving any potential conflict, I have reviewed, and will follow, the Code of Conduct for United States Judges and 28 U.S.C. § 455. I understand that the appearance of impartiality is as important as the absence of actual conflicts of interest, and would govern myself accordingly.

While I do not invest in directly in stocks or bonds, but only through mutual funds, each filing will be reviewed for potential conflicts as part of the intake process for that case. This process will apply not only to me, but to any member of my staff.

In addition, a conflict review will be triggered by the intervention or addition of any parties to a pending action.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   I have no plans, commitments or agreements for outside employment during my service on the court, should I be confirmed.

4. **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, patents, 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

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (Last name, First name, Middle initial)	2. Court or Organization	3. Date of Report
Cogan, Brian M	U.S. District Court, ED of NY	1/26/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	**5. ReportType** (check appropriate type) (•) Nomination, Date 1/25/2006 ( ) Initial ( ) Annual ( ) Final	**6. Reporting Period** 1/1/2005 to 12/31/2005
7. Chambers or Office Address 180 Maiden Lane New York, NY 10038-4982	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Stroock & Stroock & Lavan LLP
2.	Trustee	Trust #1
3.		

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

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	Stroock & Stroock & Lavan LLP, Attorney	858,321
2.	2005	Stroock & Stroock & Lavan LLP, Attorney	1,000,110

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2005	Stroock & Stroock & Lavan LLP, Attorney
2.		

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

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

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ **NONE** - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	American Express	Credit Card	K
2.			

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div rent or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1. JPMorgan Chase Bank account	B	Interest	K	T	EXEMPT				
2. Ameritrade Inc. cash account	A	Interest	J	T					
3. Advantage Advisers Stratigos Fund, LLC, Partnership		None	K	U					
4. Stroock & Stroock & Lavan LLP, Loan Receivable	E	Interest	N	U					
5. Housing Programs Limited, Partners, partnership	A	Rent	J	U					
6. Compark Owners Corp., stock, (preferred)		None	J	U					
7. Brokerage Accout #1									
8. - Apartment Investment & Management Co., Stock (comunon)	A	Dividend	J	T					
9. - Archestone-Smith Trust (REIT)	A	Dividend	J	T					
10. - Arden Realty Inc. Stock (common)	A	Dividend	J	T					
11. - AvalonBay Communities Inc. Stock (common)	A	Dividend	J	T					
12. - BRE Properties Inc. Stock (common)	A	Dividend	J	T					
13. - Brandywine Realty Trust (REIT)	A	Dividend	J	T					
14. - Camden Property Trust (REIT)	A	Dividend							
15. - Corporate Office Properties Trust, Inc , Stock (common)	A	Dividend	J	T					
16. - Carramerica Realty Corp., Stock (comunon)	A	Dividend	J	T					
17. - Equity Residential (REIT)	A	Dividend	J	T					
18. - Extra Space Storage, Inc Stock (common)	A	Dividend	J	T					

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

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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. - Fairmont Hotels & Resort Inc. Stock (common)	A	Dividend	J	T					
20. - Federal Realty Investment Trust (REIT)	A	Dividend	J	T					
21. - Host Marriott Corp.-New Stock (common)	A	Dividend	J	T					
22. - Macerich Co. Stock (common)	A	Dividend	J	T					
23. - Mack-Cali Realty Corp. Stock (common)	A	Dividend	J	T					
24. - Post Properties Inc Stock (common)	A	Dividend	J	T					
25. - Prologis SBI (REIT)	A	Dividend	J	T					
26. - Reckson Associates Realty Corp - Stock (common)	A	Dividend	J	T					
27. - Regency Centers Corp Stock (common)	A	Dividend	J	T					
28. - Reserve Fund Primary Fund	A	Dividend	J	T					
29. - SL Green Realty Corp. Stock (common)	A	Dividend	J	T					
30. - Shurgard Storage Centers Inc., Stock (common)	A	Dividend	J	T					
31. - Simon Property Group Inc. Stock (common)	A	Dividend	J	T					
32. - Starwood Hotels & Resort Worldwide Inc., Stock (common)	A	Dividend	J	T					
33. - Taubman Centers Inc. Stock (common)	A	Dividend	J	T					
34. - AMB Property Corp. Stock (common)	A	Dividend							
35. Brokerage Account #2									
36. - ADC Telecommunications Inc. Stock (common)		None	J	T					

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

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Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
37. - Agere Systems Inc. Stock (common)		None	J	T					
38. - Alleghany Corp-Del Stock (common)	A	Dividend	J	T					
39. - Alliance Gaming Corp. Stock (common)		None	J	T					
40. - Allied Waste Industries Inc. Stock (common)		None	J	T					
41. - Alpha Natural Resources Inc. Stock (common)		None	J	T					
42. - Amerus Group Co. Stock (common)	A	Dividend	J	T					
43. - Applebee's International Inc. Stock (common)		None	J	T					
44. - Arch Coal Inc. Stock (common)	A	Dividend	J	T					
45. - Biovail Corp. Stock (common)		None	J	T					
46. - Brown Shoe Co. Inc. Stock (common)	A	Dividend	J	T					
47. - CKE Restaurants Inc. Stock (common)	A	Dividend	J	T					
48. - Centennial Communications Corp. Stock (common)		None	J	T					
49. - Chicago Bridge & Iron Co NV, Stock (common)	A	Dividend	J	T					
50. - CIENA Corp. Stock (common)		None	J	T					
51. - Cincinnati Bell Inc. Stock (common)		None	J	T					
52. - Comstock Resources Inc. Stock (common)		None	J	T					
53. - Conseco Inc. Stock (common)		None	J	T					
54. - Credence Systems Corp. Stock (common)		None	J	T					

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

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
55. - Cumulus Media Inc. Stock (common)		None	J	T					
56. - Denny's Corporation Stock (common)		None	J	T					
57. - Dynegy Inc. Stock (common)		None	J	T					
58. - Elizabeth Arden Inc. Stock (common)		None	J	T					
59. - Fairchild Semiconductor International Inc. Stock (common)		None	J	T					
60. - FelCor Lodging Trust Inc. (REIT)		None	J	T					
61. - First Marblehead Corp. Stock (common)	A	Dividend	J	T					
62. - Florida East Coast Industries Inc. Stock (common)	A	Dividend	J	T					
63. - Foundation Coal Holdings Inc. Stock (common)		None	J	T					
64. - Gasco Energy Inc. Stock (common)		None	J	T					
65. - General Cable Corp. Stock (common)		None	J	T					
66. - Genesis Healthcare Corp. Stock (common)		None	J	T					
67. - Global Signal Inc. Stock (common)	A	Dividend	J	T					
68. - Grey Wolf Inc. Stock (common)		None	J	T					
69. - Hain Celestial Group Inc. Stock (common)		None	J	T					
70. - Helmerich & Payne Inc. Stock (common)	A	Dividend	J	T					
71. - Imax Corp. Stock (common)		None	J	T					
72 - Infinity Property & Casualty Corp Stock (common)	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2 Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
73. - Isle of Capri Casinos Inc. Stock (common)		None	J	T					
74. - Kansas City Southern Stock (common)		None	J	T					
75. - Kensey Nash Corp. Stock (common)		None	J	T					
76. - Key Energy Services Inc. Stock (common)		None	J	T					
77. - Kindred Healthcare Inc. Stock (common)		None	J	T					
78. - Kulicke & Soffa Industries Inc. Stock (common)		None	J	T					
79. - Lifepoint Hospitals Inc. Stock (common)		None	J	T					
80. - Magellan Health Services Inc. Stock (common)		None	J	T					
81. - Meristar Hospitality Corp. Stock (common)		None	J	T					
82. - Mikohn Gaming Corp. Stock (common)		None	J	T					
83. - NBTY Inc. Stock (common)		None	J	T					
84. - Novell Inc. Stock (common)		None	J	T					
85. - OM Group Inc. Stock (common)		None	J	T					
86. - ON Semiconductor Corp. Stock (common)		None	J	T					
87. - Pacer International Inc. Stock (common)	A	Dividend	J	T					
88. - Penn National Gaming Inc. Stock (common)		None	J	T					
89. - Penn Treaty American Corp. Stock (common)		None	J	T					
90. - Pinnacle Entertainment Inc. Stock (common)		None	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
91. - Red Robin Gourmet Burgers, Inc. Stock (common)		None	J	T					
92. - Reserve Fund Primary Fund	A	Dividend	J	T					
93. - Ruby Tuesday Inc. Stock (common)	A	Dividend	J	T					
94. - SBA Communications Corp. Stock (common)		None	J	T					
95. - Sinclair Broadcast Group Inc. Stock (common)	A	Dividend	J	T					
96. - Sonus Networks, Inc. Stock (common)		None	J	T					
97. - Sunterra Corporation (common)		None	J	T					
98. - TLC Vision Corp. Stock (common)		None	J	T					
99. - TODCO Stock (common)	A	Dividend	J	T					
100. - Ubiquitel Inc. Stock (common)		None	J	T					
101. - Unit Corp. Stock (common)		None	J	T					
102 - United Rentals Inc. Stock (common)		None	J	T					
103. - Universal American Financial, Corp. Stock (comon)		None	J	T					
104. - Vishay Intertechnology Inc. Stock (common)		None	J	T					
105. - Wabtec Corp. Stock (common)	A	Dividend	J	T					
106. - Western Gas Resources Inc. Stock (common)	A	Dividend	J	T					
107. Brokerage Account #3									
108. - AGL Resources Inc. Stock (common)	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
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	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
109. - Affiliated Computer Services Inc. Stock (common)		None	J	T					
110. - Albemarle Corp. Stock (common)	A	Dividend	J	T					
111. - Alltel Corp. Stock (common)	A	Dividend	J	T					
112. - American Electric Power Co. Inc. Stock (common)		None	J	T					
113. - American Standard Companies Inc. Stock (common)	A	Dividend	J	T					
114. - Ametek Inc. Stock (common)	A	Dividend	J	T					
115. - Amphenol Corp. Stock (common)		None	J	T					
116. - Applebee's International Inc. Stock (common)		None	J	T					
117. - Ashland Inc. Stock (common)	A	Dividend	J	T					
118. - Assurant Inc. Stock (common)	A	Dividend	J	T					
119. - AutoNation Inc. Stock (common)		None	J	T					
120. - AutoZone Inc. Stock (common)		None	J	T					
121. - Ball Corp. Stock (common)	A	Dividend	J	T					
122. - Brookfield Properties Corp. Stock (common)	A	Dividend	J	T					
123. - Brown Forman Corp. Stock (common)	A	Dividend	J	T					
124. - Burlington Resources Inc. Stock (common)	A	Dividend	J	T					
125. - Carlisle Companies Inc. Stock (common)	A	Dividend	J	T					
126. - Centurytel Inc Stock (common)	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
127. - Cincinnati Financial Corp. Stock (common)	A	Dividend	J	T					
128. - Clorox Co. Stock (common)	A	Dividend	J	T					
129. - Columbia Sportswear Co. Stock (common)		None	J	T					
130. - Computer Associates International Inc. Stock (common)	A	Dividend	J	T					
131. - Coventry Health Care Inc. Stock (common)		None	J	T					
132. - Crane Co. Stock (common)	A	Dividend	J	T					
133. - Cullen/ Frost Bankers Inc. Stock (common)	A	Dividend	J	T					
134. - DPL Inc. Stock (common)	A	Dividend	J	T					
135 - Dean Foods Co. Stock (common)		None	J	T					
136. - Del Monte Foods Co. Stock (common)		None	J	T					
137. - Devon Energy Corporation Stock (common)	A	Dividend	J	T					
138. - Dex Media Inc. Stock (common)	A	Dividend	J	T					
139 - E Trade Financial Corporation Stock (common)		None	J	T					
140. - Energen Corp. Stock (common)	A	Dividend	J	T					
141. - Energy East Corporation Stock (common)	A	Dividend	J	T					
142. - Family Dollar Stores Inc. Stock (common)	A	Dividend	J	T					
143. - Forest City Enterprises Inc. Stock (common)	A	Dividend	J	T					
144 - Fortune Brands Inc. Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
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3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting: Cogan, Brian M

Date of Report: 1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
145. - Gannett Co. Inc. Stock (common)	A	Dividend	J	T					
146. - Genuine Parts Co. Stock (common)	A	Dividend	J	T					
147. - Genworth Financial Inc. Stock (common)	A	Dividend	J	T					
148. - Golden West Financial Corp. Stock (common)	A	Dividend	J	T					
149. - Harsco Corp. Stock (common)	A	Dividend	J	T					
150. - Hilton Hotels Corp. Stock (common)	A	Dividend	J	T					
151. - Hormel Foods Corp. Stock (common)	A	Dividend	J	T					
152. - Hughes Supply Inc. Stock (common)	A	Dividend	J	T					
153. - Istar Financial Inc. Stock (common)	A	Dividend	J	T					
154. - Interactive Data Corp. Stock (common)	A	Dividend	J	T					
155. - Kinder Morgan Inc. Stock (common)	A	Dividend	J	T					
156. - Knight-Ridder Inc. Stock (common)	A	Dividend	J	T					
157. - Estee Lauder Companies Inc. Stock (common)		None	J	T					
158. - Limited Brands Inc. Stock (common)	A	Dividend	J	T					
159. - M & T Bank Corp. Stock (common)	A	Dividend	J	T					
160. - MGIC Investment Corp. Stock (common)	A	Dividend	J	T					
161. - Manor Care Inc. Stock (common)	A	Dividend	J	T					
162. - Marathon Oil Corp. Stock (common)	A	Dividend	J	T					

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

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Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
163. - MeadWestvaco Corp. Stock (common)	A	Dividend	J	T					
164. - NCR Corp. Stock (common)		None	J	T					
165. - North Fork Bancorp , Inc. Stock (common)	A	Dividend	J	T					
166. - Northern Trust Corp. Stock (common)	A	Dividend	J	T					
167. - Old Republic International Corp. Stock (common)	A	Dividend	J	T					
168. - Omnicare Inc. Stock (common)	A	Dividend	J	T					
169. - Outback Steakhouse Inc. Stock (common)	A	Dividend	J	T					
170. - PG&E Corp Stock (common)	A	Dividend	J	T					
171. - PPG Industries Inc. Stock (common)	A	Dividend	J	T					
172. - PPL Corporation Stock (common)	A	Dividend	J	T					
173. - Pactiv Corp. Stock (common)		None	J	T					
174. - Pioneer Natural Resources Co. Stock (common)	A	Dividend	J	T					
175. - Pitney Bowes Inc Stock (common)	A	Dividend	J	T					
176. - T. Rowe Price Group, Inc. Stock (common)	A	Dividend	J	T					
177. - Principal Financial Group Inc. Stock (common)		None	J	T					
178. - Quest Diagnostics Inc. Stock (common)	A	Dividend	J	T					
179. - Rayonier Inc. Stock (common)	A	Dividend	J	T					
180. - Republic Services Inc. Stock (common)	A	Dividend	J	T					

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

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
181. - Reserve Fund Primary Fund	A	Dividend	J	T					
182. - Safeco Corp. Stock (common)	A	Dividend	J	T					
183. - SCANA Corporation Stock (common)	A	Dividend	J	T					
184. - E W Scripps Co. Stock (common)	A	Dividend	J	T					
185. - Sherwin-Williams Co. Stock (common)	A	Dividend	J	T					
186. - Sigma-Aldrich Corp. Stock (common)	A	Dividend	J	T					
187. - TCF Finanial Corp. Stock (common)	A	Dividend	J	T					
188. - TJX Companies Inc. Stock (common)	A	Dividend	J	T					
189. - Telephone and Data Systems Inc. Stock (common)	A	Dividend	J	T					
190. - Tiffany & Co Stock (common)	A	Dividend	J	T					
191. - UGI Corp Holding Co. Stock (common)	A	Dividend	J	T					
192. - V F Corp. Stock (common)	A	Dividend	J	T					
193. - Vornado Realty Trust (REIT)		None	J	T					
194. - Vulcan Materials Co. Stock (common)	A	Dividend	J	T					
195. - Webster Financial Corp. Stock (common)	A	Dividend	J	T					
196. - Westar Energy Inc. Stock (common)	A	Dividend	J	T					
197. - Wilmington Trust Corp. Stock (common)	A	Dividend	J	T					
198. - Cooper Industries Ltd. Stock (common)	A	Dividend	J	T					

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

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

	A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
199.	- IPC Holdings Ltd. Stock (common)	A	Dividend	J	T					
200.	Brokerage Account #4									
201.	- Adobe Systems Inc. Stock (common)		None	J	T					
202.	- BJ Services Co. Stock (common)		None	J	T					
203.	- Becton Dickinson & Co. Stock (common)	A	Dividend	J	T					
204.	- Bed Bath & Beyond Inc. Stock (common)		None	J	T					
205.	- Centex Corp. Stock (common)	A	Dividend	J	T					
206.	- Coach Inc. Stock (common)		None	J	T					
207.	- ConocoPhillips Stock (common)	A	Dividend	J	T					
208.	- Countrywide Financial Corp. Stock (common)	A	Dividend	J	T					
209.	- Dell Inc. Stock (common)		None	J	T					
210.	- FedEx Corp. Stock (common)	A	Dividend	J	T					
211.	- Franklin Resources Inc. Stock (common)	A	Dividend	J	T					
212.	- Gap Inc. Stock (common)	A	Dividend	J	T					
213.	- General Dynamics Corp. Stock (common)	A	Dividend	J	T					
214.	- ITT Industries Inc. Stock (common)	A	Dividend	J	T					
215.	- International Business Machines Corp. Stock (common)	A	Dividend	J	T					
216	- Johnson & Johnson Stock (common)	A	Dividend	J	T					

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

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
217. - Johnson Controls Inc. Stock (common)	A	Dividend	J	T					
218. - Kellogg Co. Stock (common)	A	Dividend	J	T					
219. - L-3 Communications Holdings Inc. Stock (common)	A	Dividend	J	T					
220. - Laboratory Corp. Stock (Common)		None	J	T					
221. - Estee Lauder Companies Inc. Stock (common)		None	J	T					
222. - Lowes Companies Inc. Stock (common)	A	Dividend	J	T					
223. - M & T Bank Corp. Stock (common)	A	Dividend	J	T					
224. - MBNA Corp. Stock (common)	A	Dividend	J	T					
225. - Maxim Integrated Products Inc. Stock (common)	A	Dividend	J	T					
226. - McDonald's Corp. Stock (common)		None	J	T					
227. - Medtronic Inc. Stock (common)	A	Dividend	J	T					
228. - Merrill Lynch & Co. Inc. Stock (Common)	A	Dividend	J	T					
229. - Microsoft Corp. Stock (common)	A	Dividend	J	T					
230. - Occidental Petroleum Corp. Stock (common)	A	Dividend	J	T					
231. - Omnicom Group Inc. Stock (common)	A	Dividend	J	T					
232. - PPL Corporation Stock (common)	A	Dividend	J	T					
233. - Paccar Inc. Stock (common)	A	Dividend	J	T					
234. - Pepsico Inc. Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
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2 Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
235. - Praxair Inc. Stock (common)	A	Dividend	J	T					
236. - Procter & Gamble Co. Stock (common)	A	Dividend	J	T					
237. - Reserve Fund Primary Fund	A	Dividend	J	T					
238. - SLM Corporation Stock (Common)	A	Dividend	J	T					
239. - Stryker Corp. Stock (comon)		None	J	T					
240 - TJX Companies Inc. Stock (common)	A	Dividend	J	T					
241. - Valero Energy Corp. Stock (common)	A	Dividend	J	T					
242. - Verizon Communications Inc. Stock (common)	A	Dividend	J	T					
243 - Walgreen Co Stock (common)	A	Dividend	J	T					
244. - WellPoint Inc. Stock (common)		None	J	T					
245. - Yahoo! Inc. Stock (common)		None	J	T					
246. Brokerage Account #5									
247. - Alcatel Stock (common)		None	J	T					
248. - Allstate Corp. Stock (common)	A	Dividend	J	T					
249. - Altria Group Inc. Stock (common)	A	Dividend	J	T					
250. - Applied Materials Inc. Stock (common)	A	Dividend	J	T					
251. - BJ Services Co. Stock (common)	A	Dividend	J	T					
252. - Bank of America Corp Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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2 Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
253. - Boston Scientific Corp. Stock (common)		None	J	T					
254 - CIGNA Corp. Stock (common)	A	Dividend	J	T					
255. - CVS Corp. Stock (common)	A	Dividend	J	T					
256. - Cadence Design Systems Inc. Stock (common)		None	J	T					
257. - Carnival Corp. Stock (common)	A	Dividend	J	T					
258. - Chevron Corporation Stock (common)	A	Dividend	J	T					
259. - Conseco Inc. Stock (Common)		None	J	T					
260. - DirecTV Group Inc. Stock (common)		None	J	T					
261. - Eaton Corp. Stock (common)	A	Dividend	J	T					
262. - First Data Corp. Stock (common)	A	Dividend	J	T					
263. - Glaxosmithkline PLC Stock (common)	A	Dividend	J	T					
264. - HCA Inc. Stock (common)	A	Dividend	J	T					
265. - Halliburton Co. Stock (common)	A	Dividend	J	T					
266 - Home Depot Inc. Stock (common)	A	Dividend	J	T					
267. - Humana Inc. Stock (common)		None	J	T					
268. - Illinois Tool Works Inc. Stock (common)	A	Dividend	J	T					
269. - ING Groep NV Stock (common)	A	Dividend	J	T					
270 - Jones Apparel Group Inc Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
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	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
271. - Limited Brands Inc. Stock (common)	A	Dividend	J	T					
272. - MBIA Inc. Stock (common)	A	Dividend	J	T					
273. - Microsoft Corp. Stock (common)	A	Dividend	J	T					
274. - Morgan Stanley Stock (common)	A	Dividend	J	T					
275. - News Corporation Stock (common)	A	Dividend	J	T					
276. - Pfizer Inc. Stock (common)	A	Dividend	J	T					
277. - Reserve Fund Primary Fund	A	Dividend	J	T					
278. - St. Paul Travelers Companies Inc. Stock (common)	A	Dividend	J	T					
279. - Target Corp. Stock (common)	A	Dividend	J	T					
280. - Tyson Foods Inc. Stock (common)	A	Dividend	J	T					
281. - US Bancorp - DEL Stock (common)	A	Dividend	J	T					
282. - WPP Group PLC American Stock (common)	A	Dividend	J	T					
283. - Washington Mutual Inc. Stock (common)		None	J	T					
284. - Wyeth Stock (common)	A	Dividend	J	T					
285. - ACE Ltd. Stock (common)	A	Dividend	J	T					
286. - Globalsantafe Corp. Stock (common)	A	Dividend	J	T					
287. Brokerage Account #6									
288. - Altria Group Inc Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
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3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

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Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
289. - American Express Company Stock (common)	A	Dividend	J	T					
290. - American International Group Inc. Stock (common)	A	Dividend	J	T					
291. - Ameriprise Financial Stock (common)	A	Dividend	J	T					
292. - Aon Corp. Stock (common)	A	Dividend	J	T					
293. - Avon Products Inc. Stock (common)	A	Dividend	J	T					
294. - Berkshire Hathaway Inc Stock (common)		None	J	T					
295. - H & R Block Inc. Stock (common)	A	Dividend	J	T					
296. - Cardinal Health Inc. Stock (common)	A	Dividend	J	T					
297. - Caremark Rx Inc Stock (common)		None	J	T					
298. - Citigroup Inc. Stock (common)	A	Dividend	J	T					
299. - Comcast CL A SPCL Stock (common)		None	J	T					
300. - ConocoPhillips Stock (common)	A	Dividend	J	T					
301. - Costco Wholesale Corp. Stock (common)	A	Dividend	J	T					
302. - Dell Inc. Stock (common)		None	J	T					
303. - Devon Energy Corporation Stock (common)	A	Dividend	J	T					
304. - Diageo PLC Stock (common)	A	Dividend	J	T					
305. - EOG Resources Inc. Stock (common)	A	Dividend	J	T					
306. - Fifth Third Bancorp Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions.)

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307.	- Golden West Financial Corp. Stock (common)	A	Dividend	J	T					
308.	- HCA Inc. Stock (common)	A	Dividend	J	T					
309.	- HSBC Holdings PLC Stock (common)	A	Dividend	J	T					
310.	- Harley Davidson Inc. Stock (common)	A	Dividend	J	T					
311.	- Hershey Company Stock (common)	A	Dividend	J	T					
312.	- Iron Mountain Inc. Stock (common)		None	J	T					
313.	- JPMorgan Chase & Co. Stock (common)	A	Dividend	J	T					
314.	- Lloyds TSB Group PLC Stock (common)	A	Dividend	J	T					
315.	- Loews Corp. Stock (common)	A	Dividend	J	T					
316.	- Marsh & Mclennan Companies Inc. Stock (common)	A	Dividend	J	T					
317.	- Microsoft Corp. Stock (common)	A	Dividend	J	T					
318.	- Moody's Corp. Stock (common)	A	Dividend	J	T					
319.	- Occidental Petroleum Corp. Stock (common)	A	Dividend	J	T					
320.	- Progressive Corp. Stock (common)	A	Dividend	J	T					
321.	- Reserve Fund Primary Fund	A	Dividend	J	T					
322.	- Sealed Air Corp. Stock (common)		None	J	T					
323.	- Transatlantic Holdings Inc. Stock (common)	A	Dividend	J	T					
324	- Tyco International Ltd Stock (common)	A	Dividend	J	T					

1 Income/Gain Codes	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000		
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000			
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3 Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market			
(See Column C2)	U = Book Value	V = Other	W = Estimated				

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
325. - Vulcan Materials Co. Stock (common)	A	Dividend	J	T					
326. - Wal-Mart Stores Inc. Stock (common)		None	J	T					
327. - Wells Fargo & Co. Stock (common)	A	Dividend	J	T					
328. Brokerage Account #7									
329. - Amcor Ltd. Stock (common)	A	Dividend	J	T					
330. - BG Group PLC Stock (common)	A	Dividend	J	T					
331. - BP PLC Stock (common)	A	Dividend	J	T					
332. - BNP Paribas SPONS AD Stock (common)		None	J	T					
333. - Banco Santander Central Hispano SA Stock (common)	A	Dividend	J	T					
334. - Bayer AG Stock (common)	A	Dividend	J	T					
335. - Boots Group PLC UNSP Stock (common)	A	Dividend	J	T					
336. - Canon Inc. Stock (common)	A	Dividend	J	T					
337. - Coles Myer Ltd. Stock (common)	A	Dividend	J	T					
338. - Endesa SA Stock (common)	A	Dividend	J	T					
339. - Fortis NL SP ADR New Stock (common)	A	Dividend	J	T					
340. - Fosters Group Ltd. Stock (common)	A	Dividend	J	T					
341. - GlaxoSmithKline plc Stock (common)	A	Dividend	J	T					
342. - HBOS PLC Stock (common)		None	J	T					

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

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
343. - Hitachi Ltd. Stock (common)	A	Dividend	J	T					
344. - HongKong Electric HL Stock (common)	A	Dividend	J	T					
345. - ING Groep NV Stock (common)	A	Dividend	J	T					
346. - Kao Corp. SP Stock (common)		None	J	T					
347. - Lloyds TSB Group plc Stock (common)	A	Dividend	J	T					
348. - Matsushita Electric Industrial Co. Ltd. Stock (common)	A	Dividend	J	T					
349. - Millea Holdings Inc. Stock (common)	A	Dividend	J	T					
350. - National Australia Bank Ltd. Stock (common)	A	Dividend	J	T					
351. - National Grid plc Stock (common)	A	Dividend	J	T					
352. - Nippon Telegraph & Telephone Corp. Stock (common)	A	Dividend	J	T					
353. - POSCO Stock (common)	A	Dividend	J	T					
354. - RWE AG Stock (common)	A	Dividend	J	T					
355. - Reed Elsevier NV Stock (common)	A	Dividend	J	T					
356. - Reserve Fund Primary Fund	A	Dividend	J	T					
357. - Rio Tinto plc Stock (common)	A	Dividend	J	T					
358. - Royal Dutch Shell Stock (common)	A	Dividend	J	T					
359 - Sasol Ltd. Stock (common)	A	Dividend	J	T					
360. - Societe Generale Stock (common)	A	Dividend	J	T					

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
361. - Stora Enso Corp. Stock (common)		None	J	T					
362. - Telecom Corp. of New Zealand Ltd. Stock (common)	A	Dividend	J	T					
363. - Telefonica SA Stock (common)	A	Dividend	J	T					
364. - Telstra Corporation Ltd. Stock (common)	A	Dividend	J	T					
365. - Total S.A. Stock (common)	A	Dividend	J	T					
366. - Toyota Motor Corp. Stock (common)	A	Dividend	J	T					
367. - Unilever PLC Stock (common)	A	Dividend	J	T					
368. - UPM-Kymmene Corp. Stock (common)	A	Dividend	J	T					
369. - Intercontinental Hotels Group PLC Stock (common)	B	Dividend							
370. Brokerage Account #8									
371. - Bear Stearns NY Money Fund	A	Dividend	J	T					
372 - Franklin Templeton Fund	B	Dividend	K	T					
373. - New York NY G/O Subser G-4 Fund		None	L	T					
374. Brokerage Account #9									
375. - Causeway International Value Fund		None	J	T					
376. - Constellation Sands Cap Select Growth Fund Cl II		None	J	T					
377 - Davis New York Venture Fund Inc.		None	J	T					
378. - Harbor Small Cap Value Fund		None	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
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	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
379. - Ishares Lehman 1-3 Yr Treasury Bond (ETFS)	A	Dividend	J	T					
380. - Ishares MSCI EAFE Index Fund (ETFS)	A	Dividend	J	T					
381. - Ishares Russell Midcap Index Fund (ETFS)	A	Dividend	J	T					
382. - Ishares Trust Russell 2000 Growth Index Fund	A	Dividend	J	T					
383. - PIMCO High Yield Fund Cl A	A	Dividend	J	T					
384. - Reserve Fund Primary Fund Treasury Class	A	Dividend	J	T					
385. - streetTRACKS Wilshire Reit ETF	A	Dividend	J	T					
386. Brokerage Account #10									
387. - Causeway International Value Fund		None	J	T					
388. - Constellation Fds Sands Cap Sel Growth Fund Cl II		None	J	T					
389. - Davis New York Venture Fund Inc. Cl A		None	J	T					
390. - Harbor Small Cap Value Fund		None	J	T					
391 - Ishares Trust 1-3 Yr Treasury Index Fund (ETFS)	A	Dividend	J	T					
392. - Ishares MSCI EAFE Index Fund (ETFS)	A	Dividend	J	T					
393. - Ishares Trust Russell Midcap Index Fund (ETFS)	A	Dividend	J	T					
394. - Ishares Russell 2000 Growth Index Fund (ETFS)	A	Dividend	J	T					
395. - PIMCO High Yield Fund Cl A	A	Dividend	J	T					
396. - Reserve Fund Primary Fund Treasury Class	A	Dividend	J	T					

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

	A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
397.	- streetTRACKS Wilshire Reit ETF	A	Dividend	J	T					
398.	Goldman Sachs Tollkeeper Fund		None	J	T					
399.	College Access 529 Plan #1									
400.	- Government Backed Trs Ctf Turkey Zero Cpn Cl T-1 Bond	A	Interest	K	T					
401.	- New York City Prin M-Raes 8% 8/1/07 Bond	B	Interest	J	T					
402.	- US Treasury Strip-Tint- 8/15/06 Bond	A	Interest	J	T					
403.	College Access 529 Plan #2									
404.	- New York City Prin M-Raes 8% 8/1/07 Bond	B	Interest	J	T					
405.	IRA #1	A	Dividend	K	T					
406	- Ishares MSCI Emerg Mkts Index Fund (ETFS)									
407.	- Ishares MSCI EAFE Index Fund (ETFS)									
408.	- Ishares Russell Midcap Index Fd (ETFS)									
409.	- Ishares Russell 1000 Value Index Fd (ETFS)									
410.	- Ishares Russell 1000 Growth Index Fd (ETFS)									
411.	- Ishares Russell 2000 Value Index Fund (ETFS)									
412.	- Ishares Russell 2000 Growth Index Fund (ETFS)									
413.	- Reserve Fund Primary Fund Tresury Class									
414	- streetTRACKS Wilshire Reit ETF									

1. Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
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	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
	U = Book Value	V = Other	W = Estimated			

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Name of Person Reporting	Date of Report
Cogan, Brian M	1/26/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div, rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month-Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
415. IRA #2	A	Dividend	K	T					
416. - Ishares MSCI Emerg Mkts Index Fund (ETFS)									
417. - Ishares MSCI EAFE Index Fund (ETFS)									
418. - Ishares Russell Midcap Index Fd (ETFS)									
419. - Ishares Russell 1000 Value Index Fd (ETFS)									
420. - Ishares Russell 1000 Growth Index Fd (ETFS)									
421. - Ishares Russell 2000 Value Index Fund (ETFS)									
422. - Ishares Russell 2000 Growth Index Fund (ETFS)									
423. - Reserve Fund Primary Fund Treasury Class									
424. - streetTRACKS Wilshire Reit ETF									
425. Retirement Plan for Partners #1	D	Dividend	O	T					
426. - Lehman Ishares Bond Fund									
427. - Bernstein Equity Fund									
428. - Baird Capital Fund									
429. - C.S. MC Kee, L.P. Fund									
430. - Private Capital Management Fund									
431. - Brandes Investment Partners Fund									
432. - Calamos Investment Management Fund									

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2 Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
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3 Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
433. - Fayez Sarofim & Company Fund									
434. - Allegiance Capital Fund									
435. Retirement Plan for Partners #2	D	Dividend	O	T					
436. - Lehman Ishares Bond Fund									
437. - Bernstein Equity Fund									
438 - Baird Capital Fund									
439. - C.S. MC Kee, L.P. Fund									
440. - Private Capital Management Fund									
441. - Brandes Investment Partners Fund									
442. - Calamos Investment Management Fund									
443. - Fayez Sarofim & Company Fund									
444 Profit Sharing Plan for Partner #1	B	Dividend	L	T					
445. - Lehman Ishares Bond Fund									
446. - Bernstein Equity Fund									
447. - Baird Capital Fund									
448. - C.S. MC Kee, L.P. Fund									
449. - Private Capital Management Fund									
450. - Brandes Investment Partners Fund									

1 Income/Gain Codes (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
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	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A -H)	B. (2) Type (e.g. div. rent. or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
451. - Calamos Investment Management Fund									
452. - Fayez Sarofim & Company Fund									
453. - Allegiance Capital Fund									
454. Profit Sharing Plan for Partner #2	B	Dividend	L	T					
455. - Lehman Ishares Bond Fund									
456 - Bernstein Equity Fund									
457. - Baird Capital Fund									
458. - C.S. MC Kee, L.P. Fund									
459. - Private Capital Management Fund									
460. - Brandes Investment Partners Fund									
461. - Calamos Investment Management Fund									
462. - Fayez Sarofim & Company Fund									
463. Trust #1									
464. - AXA Equitable Incentive Life Policy	A	Interest	J	T					
465. Trust #2									
466. - AXA Equitable Incentive Life Policy	A	Interest	J	T					
467. IRS Federal Income Tax Receivable		None	M	U					

1 Income/Gain Codes	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2 Value Codes	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
(See Columns C1 and D5)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
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3 Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
(See Column C2)	U = Book Value	V = Other	W = Estimated			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cogan, Brian M	1/26/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

No non-investment income for 2006 has been received to date for filer or spouse.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cogan, Brian M	1/26/2006

IX. CERTIFICATION.

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

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

Signature Date 1/26/2006

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		97,	765	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule item #1	1,	611,	164	Notes payable to relatives			
Unlisted securities-add schedule item#2		32,	121	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		17,	142
Due from relatives and friends				Unpaid income tax			
Due from others		451,	459	Other unpaid income and interest			
Federal income tax receivable		155,	233	Real estate mortgages payable-add schedule item #5		313,	979
Real estate owned-add schedule item #4	1,	725,	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		165,	000	Auto Lease		18,	000
Cash value-life insurance		6,	020				
Other assets itemize:							
Other assets - add schedule item #3	2,	046,	952				
				Total liabilities		349,	121
				Net Worth	5,	941,	593
Total Assets	6,	290,	714	Total liabilities and net worth	6,	290,	714
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

1. LISTED SECURITIES:		
BEAR STERNS MANAGED ACCOUNTS:		
Bear, Stearns Securities Corp - Franklin Templeton & NY Tax Free Mutual Funds	117,619	
Bear, Stearns Securities Corp - Cambiar Investors	124,868	
Bear, Stearns Securities Corp - Davis Select Advisors	138,616	
Bear, Stearns Securities Corp - Delaware Capital Mgt.	321,107	
Bear, Stearns Securities Corp - IRA #1	22,318	
Bear, Stearns Securities Corp - JPMorgan Fleming Asset	188,517	
Bear, Stearns Securities Corp - New Amsterdam Partners	132,193	
Bear, Stearns Securities Corp - Penn Capital Mgt.	202,885	
Bear, Stearns Securities Corp - Security Capital	140,457	
Bear, Stearns Securities Corp - IRA #2	19,612	1,408,192
STATE OF ISRAEL BOND		180
GOLDMAN SACHS TOLLKEEPER FUND		1,894
UTMA/NY HORIZON ACCOUNTS:		
Account #1	78,621	
Account #2	68,012	146,633
COLLEGE ACCESS 529 PLANS:		
Plan #1	9,493	
Plan #2	44,772	54,265
TOTAL LISTED SECURITIES		**1,611,164**
2. UNLISTED SECURITIES:		
COMPARK OWNERS CORP. - PREFERRED SHARES		
Shareholder #1	1,000	
Shareholder #2	1,000	2,000
HOUSING PROGRAMS LTD. - PARTNERSHIP @ 12/31/04		(3,026)
ADVANTAGE ADVISERS STRATIGOS FUND, LLC - PARTNERSHIP @ 12/31/04		33,147
TOTAL UNLISTED SECURITIES		**32,121**
3. OTHER ASSETS:		
STROOCK & STROOCK & LAVAN LLP - MEMBERSHIP INTEREST IN LAW FIRM @ 10/31/05:		
Member #1	31,742	
Member #2	37,513	69,255
PENSION PLANS @ 9/30/05:		
Stroock & Stroock & Lavan Profit Sharing Plan #1	52,149	
Stroock & Stroock & Lavan Retirement Plan #1	890,616	
Stroock & Stroock & Lavan Profit Sharing Plan #2	52,640	
Stroock & Stroock & Lavan Retirement Plan #2	982,292	1,977,697
TOTAL OTHER ASSETS		**2,046,952**
4. REAL ESTATE OWNED:		
Primary Residence	1,225,000	
Vacation Home (50% of ownership)	500,000	
TOTAL REAL ESTATE OWNED		**1,725,000**
5. REAL ESTATE MORTGAGES PAYABLE:		
Chase Manhattan Mortgage Corp - Primary Residence	313,979	
TOTAL REAL ESTATE MORTGAGES PAYABLE		**313,979**

III. GENERAL (PUBLIC)

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

Since 2002 and continuing, I have volunteered (unpaid)an average of 10-30 hours per month in counseling enlisted soldiers and Marines on their rights, both as servicemembers under federal and state law and as U.S. citizens. For the most part, this work occurs on military bases on the eve of the servicemembers' deployment to Iraq or Afghanistan. In those sessions, I draft their Last Will and Testament on the spot and have them execute it. I also prepare Powers of Attorney, Health Care Proxies, and Living Wills (Do Not Resuscitate directives) for them, and make sure their dealings with banks and other creditors are in order before they deploy. This effort often involves meeting with the servicemember's family to reassure them that the servicemember's affairs are in order. I would estimate that I have performed this service for several hundred enlisted troops, and on an administrative level, I have coordinated activities for other volunteer lawyers for more than 1000 other servicemembers.

I have also handled several pro bono cases during my tenure at my firm, representing religious institutions in commercial or fraudulent transfer actions on two occasions. I am presently representing the Guardian Ad Litem of a severely brain damaged immigrant child in connection with the child's medical malpractice claim. The time commitment for this changes but has not been extensive.

I also consider my volunteer work for the Departmental Disciplinary Committee to have been in the public interest, as many of the complainants have limited resources or lack the ability to pursue redress against attorneys, and the disciplinary process is the only effective voice they have. Also, on some occasions, the triggering of the disciplinary process will lead to a reconciliation between the lawyer and the client of limited

resources. During my tenure on this Committee, I estimate that I put in excess of 100 hours per year.

In 2002, I was a member of the City Bar Justice Center Pro Bono Society, membership in which is attained by self-certification of having put in 100 or more pro bono hours for the year.

2. 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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not, and have never, belonged to such an organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Governor Pataki maintains a merit selection committee to recommend candidates to the President for the federal district courts in New York. I appeared before that Committee, and I understand that people who know me contacted members of the Committee and the Governor on my behalf. I subsequently was called to be interviewed by the Governor's Counsel in his office. I then received a call from the Governor's Counsel advising me that the Governor was recommending to the White House three names for an open position on the court, and that I would be one of those names. I was then called by the Deputy White Counsel and interviewed by him and two other lawyers in his office, and I believe that the other two candidates were also interviewed. I was later informed that I was recommended to be considered for nomination. After a background investigation was conducted and I completed nomination paperwork, the President submitted my nomination to the Senate on January 25, 2006.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is essential for judges to recognize that the doctrine of separation of powers is a cornerstone of our constitutional

democracy, and that the intrusion of any one branch into the responsibilities of another compromises the rule of law upon which the Constitution is based.

This is particularly true of the judicial branch, whose members are appointed for life, and around which numerous limitations, both constitutional and jurisprudential, have been imposed to control what would otherwise be largely unbridled power. Included among these limitations is, first, that federal courts are courts of limited jurisdiction, not roving courts of vaguely defined concepts of equity, which must have an actual case or controversy before them in order to apply the law. Similarly, the rule of *stare decisis* helps to ensure predicatability and continuity in every facet of our citizens' lives, from civil rights to commercial relations. Another example of these limiting rules is the presumption of constitutionality, the notion that the ability to read the Constitution is not confined to the judiciary, and Congress most often knows the established limits of its own power and can be relied upon to carry out its responsibility of implementing the will of the people.

The current debate has been useful in reminding both judges and the public that judges should be supporting players on the stage of democracy, not the lead actors. It has emphasized the fundamental democratic principle that the people did not elect the judge to serve, and thus simply because a judge thinks a legislative enactment or the failure to enact a law was ill-advised, it is not the judge's charge to engage in social policy making by substituting his or her own judgment in place of that of the elected representatives of the people. In connection with being a judge, there is a natural human tendency, because of the authority and profile of the judge's office and the respect in which it is held, towards self-importance, and the debate has helped to check that tendency.

The current debate has not, in my view, obscured the equally important corollary responsibility of judges as the ultimate protector of individual rights that are embodied in the Constitution. All responsible parties to the debate acknowledge that the courts remain an essential check and balance in our democratic system, and that judges must fulfill the responsibility given to them by the Constitution to protect those rights.

AFFIDAVIT

I, Brian M. Cogan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7 Feb 2006
(DATE)

(NAME)

(NOTARY)

CHRISTINA THOMPSON
Notary Public, State of New York
No. 01TH6043888
Qualified in Kings County
Commission Expires August 21, 2006

Senator DEWINE. Mr. Cogan, I notice that you have dedicated a significant amount of your time in the past few years to serving enlisted men and women prior to their deployments to Afghanistan and Iraq. Do you want to tell us about your service among these folks going into the armed service?

Mr. COGAN. Yes, Senator. The New York Guard is a State of New York agency, a sister service to the New York National Guard. My unit is composed of volunteers, and although our military is entirely volunteers, my unit are unpaid volunteers, lawyers who go on to military bases on the eve of deployment and counsel soldiers and their families about their legal rights and needs. We draw wills and have them sign there. We draft living wills, do not resuscitate orders, and generally answer any questions they have so that they have peace of mind before they are deployed overseas.

Senator DEWINE. I am sure that must be very rewarding work. Mr. Cogan, you have spent a good part of your practice, your career, representing large corporations. Whoever comes to the bench brings a certain background, part of your background at least. How will you make that transition to, obviously, a different background of being a Federal judge?

Mr. COGAN. Senator, thanks for that question. It is a good question. My practice has not at all been confined to major corporations. I have represented a number of individuals, many individuals of modest means, and also small businesses. I do quite a bit of that. I would say at the current time my practice is probably 50 percent small businesses. So I have seen quite a lot of diversity in the kinds of people I have represented, and through the volunteer work I have done, you know, I consider myself the lawyer for those soldiers. So I have seen all kinds of people in connection with my practice.

Senator DEWINE. You have had experience in the area of bankruptcy law, I see, and commercial litigation.

Mr. COGAN. Yes, sir.

Senator DEWINE. Tell us a little bit about that, how that might have prepared you for this job.

Mr. COGAN. It has given me a fair amount of trial work, Senator. As you know, everything in bankruptcy court, even a motion for an extension of time, can turn into a trial. And it has given me a range of small cases and very large cases, cases that have gone to the Second Circuit and cases that get no further than bankruptcy court.

It has also given me a lot of international litigation exposure. I have done a lot of work with lawyers in foreign countries, and I know how their legal systems work.

Senator DEWINE. Mr. Barrett, you have handled some death penalty cases on both sides; is that correct?

Mr. BARRETT. Yes, Mr. Chairman.

Senator DEWINE. I don't know if that is totally unique, but some people go through their lifetime career and never handle a death penalty case on either side, I guess. How has that affected your view of an attorney's role or a judge's role within our legal system? And what, if anything, did you learn from these cases?

Mr. BARRETT. I think the most important thing that I have learned is the absolute need to be careful and make sure that all

the I's are dotted and the T's are crossed and that all of the procedural requirements are met, and when there is so much on the line on either side of those cases, you have total concentration and you just can't spend enough time on them. And it has taught me to be very careful.

Senator DEWINE. The *State* v. *Randall Ayers* case, tell us a little bit about that case.

Mr. BARRETT. Your Honor, that was a case—due to an extraordinary set of circumstances, an identification was made of a defendant which later proved out to be incorrect after—

Senator DEWINE. You were the prosecutor or the defense lawyer.

Mr. BARRETT. I was the prosecutor, assistant prosecutor on that. And he was convicted, and several years later, a serial sexual assault defendant in another jurisdiction confessed to the crime. And I can't highlight what that meant to me in terms of trying to be careful, trying to understand cases, reliance on scientific evidence, where possible and where appropriate.

Senator DEWINE. You also have handled domestic relations cases. This is not the type case that you are probably going to be dealing with on the Federal bench, but what have you taken from the handling of this type case that might be of some assistance to you on the Federal bench?

Mr. BARRETT. One of the main things I think that I learned from my domestic relations practice is the benefit of alternate dispute resolution, trying to resolve cases through mediation or special settlement counsel. As the court is probably aware, a number of those cases are contentious and emotional, and it helps take the steam out of those if you have a mediator that can sit down with the parties and actually try to arrive at a resolution that benefits everybody, especially the children.

Senator DEWINE. Tell me a little bit about one of your first jobs right out of law school. You were an administrative hearing officer. What was that like?

Mr. BARRETT. That was very interesting, Your Honor. The State of Ohio had changed their entire job description classification code, and all of the State employees had an automatic right to appeal their new designations. And myself and a group of 30 other attorneys traveled around the State, and we conducted employee hearings at all of the State facilities from penal institutions to ODOT installations, and we determined the appropriateness of classifications and pay grades.

Senator DEWINE. That was right out of law school, was it?

Mr. BARRETT. Yes, it was a situation where there was a special House bill that was passed because they needed to get a number of attorneys on board very quickly, and the qualification was you had to be a law school graduate but did not have to actually be licensed in the State of Ohio yet. And as a result of that, I would say out of our group of attorneys that handled these cases, probably 95 percent of us were graduates waiting for the bar results and not licensed attorneys. But that was a real eye-opener to start with.

Senator DEWINE. Mr. Golden, for the last several years, you have served as the director of a group called Lawyers Concerned for Lawyers, Inc. What is that all about?

Mr. GOLDEN. Senator, that is the group formulated by the Pennsylvania Supreme Court to assist lawyers, impaired lawyers who have addiction problems, mental health problems. It sets up a confidential hotline, and trained counselors are then used to refer those folks who have problems to necessary treatment facilities and to programs to help in their rehabilitation.

Senator DEWINE. And how long have you served in that position?

Mr. GOLDEN. I believe, Senator, 5 years or 6 years.

Senator DEWINE. Your practice has been a more general practice; is that right?

Mr. GOLDEN. Yes, Senator. I started out as an insurance company defense lawyer doing civil litigation, and I did that for approximately 15 years, and it blossomed into commercial litigation, all types of litigation, and then my practice began to change and I came to represent a cross-section of a small town. Reading is a town of about 80,000, in a county of about 400,000. And I represent businesses, banks, a college, and a lot of individuals. And through that I still maintained the litigation practice, but it diminished.

Senator DEWINE. Mr. Golden, you have been pretty active in the Bar Association, the county level, State level, too; is that right?

Mr. GOLDEN. Yes, sir.

Senator DEWINE. Do you want to tell us a little bit about that?

Mr. GOLDEN. Throughout my career as a lawyer, I have always been involved in bar activities. Initially, it was a wonderful way to get to know people. More importantly, it was a way to learn about the law from the practical side.

For whatever reason, I ended up being selected for different positions in my local bar, and then later on assumed a role as a Governor on the Pennsylvania Bar Association Board. And from that I was asked to run for president of the bar, and I was president of the Pennsylvania Bar, which was a wonderful experience. I probably got more out of that than I ever gave back in it, and it allowed me to get to know so many people, so many great lawyers, be involved in all aspects of the legal profession, and realize that what we do as lawyers has a broad effect and a great effect on our society.

Senator DEWINE. My understanding is that, if confirmed, you would keep your—the chambers would be in Reading; is that correct?

Mr. GOLDEN. Yes, Senator.

Senator DEWINE. Is that your choice? Do you get to make that decision?

Mr. GOLDEN. Yes, Senator. Although we love the great city of Philadelphia, with all deference to Senator Specter, I am very pleased to remain in my community. This is an outlying—as Senator Santorum described, Berks County is at the westernmost edge of the Eastern District, and it is a huge inconvenience for lawyers and the party litigants and the witnesses to travel into Philadelphia. It is a wonderful opportunity for the local population to understand the Federal court system, to be exposed to the Federal court system, and it will be a real benefit for our community. I am more than happy to stay there, Senator.

Senator DEWINE. I was just curious how you handle that in Pennsylvania. Mr. Barrett will not get to make that decision in Ohio. So you get to make that decision in Pennsylvania.

Mr. GOLDEN. Senator—

Senator DEWINE. I am just giving you a hard time, Mr. Golden. Don't worry about that.

[Laughter.]

Mr. GOLDEN. And I am enjoying it. No, I like Reading, so I am happy to be there.

Senator DEWINE. We want you to be where you want to be, I am sure.

Let me ask you this: Mr. Cogan, why do you want to be a Federal judge?

Mr. COGAN. Senator, I think that any litigator, or at least most litigators who want to do and have the financial ability to do public service, for any of us it is really the ideal job. There is no public service job that allows you to interact with the public on that level one on one to let them know that their opportunity to be part of the judicial system, to have their cases heard, to have someone listen to their grievances, will be carried out. That to me is an indispensable part that we bring when we become Federal judges, if we are fortunate enough to be confirmed, and it is a contribution that I don't think anything else is like.

Senator DEWINE. Mr. Barrett?

Mr. BARRETT. Thank you, Mr. Chairman. I have been engaged in trial practice for almost 30 years now in just about every kind of court, and I have dealt with a number of different types of litigants, their attorneys, and judges. And I have reached an age where I think that I have developed enough experience and enough ideas that, if I were fortunate enough to get this position, I could actually have a positive impact on issues such as docket control and case management, and I think I can make a positive contribution to the community, if I were lucky enough to be selected.

Senator DEWINE. Mr. Golden?

Mr. GOLDEN. Senator, as my colleagues have just said, being a Federal judge is a wonderful opportunity to give back. When you reach a certain point in your career and you have done an awful lot of things, I think every lawyer comes to the recognition that public service is part of what we do.

To become a Federal judge is a wonderful opportunity for me to help my community, to give back, and to perform public service at a time in my life when I continue to—where I can continue to make a valuable contribution to my society.

Senator DEWINE. Mr. Golden, let me ask you the question we ask all the nominees. The Supreme Court and Federal circuit court precedents are, of course, binding on district courts. I must ask you: Are you committed and willing to follow the precedents of the higher courts faithfully and give them full force and effect even if you might personally disagree with those precedents?

Mr. GOLDEN. Absolutely, Senator.

Senator DEWINE. Mr. Barrett, same question.

Mr. BARRETT. Absolutely, Mr. Chairman.

Senator DEWINE. Mr. Cogan, same question.

Mr. COGAN. Same answer.

Senator DEWINE. I have a statement from Senator Leahy which he would like to be made a part of the record. Without objection, it will be made a part of the record.

Mr. Golden, one of the objections that lawyers sometimes have with Federal judges as well as with State judges is that the judge doesn't let them "try their case." Occasionally, when I practiced law, many, many, many, many years ago, I used to be a prosecutor. I had some great judges, but once in a while I might have that objection. I might have been wrong about it, but do you want to react to that? What is your philosophy about how much leeway you give lawyers?

Mr. GOLDEN. I agree with you, Senator. I think it is a great comment, and when I do trial work, I think it is absolutely imperative for the judge to permit the lawyers to try their case. I also think it is imperative for the judge to be courteous. I think that the spirit of a courtroom is to make it fair for both sides, and in that spirit the lawyers must be given an opportunity to try their case.

Senator DEWINE. Mr. Barrett?

Mr. BARRETT. Mr. Chairman, I think that one of the most important things, having been on both sides of it in the courtroom, is whether you win or lose, you walk out of the courtroom feeling that you got fair treatment. And I think that the temperament of a judge and the way he allows the litigants to present the case according to their theory of the case, within certainly, you know, the appropriate constraints of the Rules of Evidence, I think that goes a long way in allowing the litigants and the parties to feel that they got a fair shake, no matter what the decision is.

Senator DEWINE. Mr. Cogan?

Mr. COGAN. Senator, I would echo my colleagues' comments. I would note that anyone who has tried a number of cases has seen judges who take the case away from the litigants. That is something that I really think should be avoided if at all possible. As I said before, litigants have to feel that they had their hearing in court. Whether they prevail or not, they had their hearing. And when the judge takes the case away, they haven't had that chance.

Senator DEWINE. Mr. Cogan, tell me a little bit about your philosophy about settlements and how you would handle that, and with it you could also cover the related issue of docket management and how you would move cases along.

Mr. COGAN. Senator, I believe it is the responsibility of a judge to actively manage his docket. That means two things: No. 1, conferencing cases often, keeping a handle on what is going on, not allowing one side or the other in the case to employ dilatory tactics to the disadvantage of the other side. I also believe the judge has the responsibility, when possible, to facilitate settlement. I know that in the Eastern District of New York, there is a rule requiring mandatory ADR of all matters involving $100,000 or less, and, where appropriate, I would encourage litigants to explore alternative dispute resolution techniques.

Senator DEWINE. Mr. Barrett?

Mr. BARRETT. Mr. Chairman, I feel that docket management is a critical issue for judges to contend with, and I think that personal involvement in a number of issues as the case works its way through the system, such as discovery, keeps things on track. I

agree with my colleague that frequent reports are also effective. Alternate dispute resolution is another means, whether it be arbitration or whether it be mediation, those types of things in appropriate cases can also speed the docket along. You have a balancing act between effective and timely docket management and also giving the parties time for preparation. And I think that as a result of courtroom experience, judges can tell what the appropriate amount of time is and when somebody is engaged in some sort of delaying tactic as opposed to actually having legitimate needs. So I think you have to be mindful of that.

I often think that there is times where the lawyers in cases are looking for direction from a judge. They may ask for a legal—how does a judge feel about a certain legal issue, and that helps them advise their clients intelligently on where a case may end up. So I think, you know, when invited by counsel, I think a judge's intervention and becoming part of the process is also very helpful.

Senator DEWINE. Mr. Golden?

Mr. GOLDEN. Senator, in the Eastern District of Pennsylvania, there are several programs in existence already dealing with alternative dispute resolution, mediation, use of United States magistrates to help settle cases. I think the judge's obligation is to stay on top of his docket and make sure, as my colleagues have said, that it keeps moving. I think in today's world it is the only answer to expeditious handling of cases to make the whole system better. I would continue to employ the methods that exist and work hard to make sure that the cases under my jurisdiction move.

Senator DEWINE. Thank you very much.

Let me thank you all for your testimony today. We appreciate it very much. Based on your records and certainly everything that I have heard today at the hearing, you all three seem very, very well qualified. I think you all will do a great job on the Federal bench.

Let me just say that we are going to leave the record open for 1 week for members of the Committee to submit written questions to any of you. This means that the record will remain open until Wednesday, April 5th, at 5 p.m., at which time it will close. So there may be written questions submitted to you. If they are during that period of time, we would strongly suggest that you respond to those immediately and get those back to us, which will expedite our ability to handle your nomination.

So we thank you all very, very much for your attention. We are glad that family members were here today. Good to see everybody. Everyone has stayed awake.

[Laughter.]

Senator DEWINE. So far. And we appreciate all of you being here.

Thank you very much.

[Whereupon, at 10:13 a.m., the Committee was adjourned.]

[A submission for the record follows.]

SUBMISSION FOR THE RECORD

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on Judicial Nominations
March 29, 2006

The Senate confirmed several judges immediately before the last recess. These confirmations brought the total number of judicial appointments since January 2001 to 234, including the confirmations of two Supreme Court Justices and 43 circuit court judges. Of course, 100 judges were confirmed during the 17 months when there was a Democratic majority in the Senate. In the other 45 months, 134 judges have been confirmed. Ironically, under Democratic leadership, the Senate was almost twice as productive as under Republican leadership.

It is regrettable that this President has not fulfilled his promise to the American people to be a uniter. Nor has he fulfilled his pledge to complete his work in advance of vacancies and to make nominations promptly. Judicial vacancies have grown to more than 50, and the White House has failed to send nominees for more than half of those. Some of those vacancies have been sitting empty for more than a year. Over and over the White House has missed the deadline the President established for himself, and today, well over half of the judicial vacancies, 30, are without a nomination. More than one-third of those vacancies, 11, are already more than 180 days old, and almost half of the judicial emergency vacancies are without a nominee.

If the White House would eliminate its partisan political and ideological litmus tests from the judicial nominations process and its emphasis on rewarding cronies and focus only on qualifications and consensus, the job of selecting nominees and our job of considering them for confirmation would be much easier. I hope to be able to review the nominations of Michael Barrett, Brian Cogan, and Thomas Golden in this light.

Thomas Golden, the nominee from Pennsylvania, and Michael Barrett, the nominee from Ohio, have the support of their Republican home-state Senators. Brian Cogan, the nominee from New York, has the support of his Democratic home-state Senators. I look forward to reviewing these nominations, and I would urge the President to send us qualified, consensus nominees for the remaining vacant positions.