AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 111–695, Pt. 7

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JULY 15, JULY 28, and SEPTEMBER 15, 2010

PART 7

Serial No. J–111–4

Printed for the use of the Committee on the Judiciary

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00001 Fmt 6011 Sfmt 6011 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00002 Fmt 6019 Sfmt 6019 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

S. HRG. 111–695, Pt. 7

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JULY 15, JULY 28, and SEPTEMBER 15, 2010

PART 7

Serial No. J–111–4

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

66–720 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00003 Fmt 5011 Sfmt 5011 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

HERB KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
BENJAMIN L. CARDIN, Maryland
SHELDON WHITEHOUSE, Rhode Island
AMY KLOBUCHAR, Minnesota
EDWARD E. KAUFMAN, Delaware
ARLEN SPECTER, Pennsylvania
AL FRANKEN, Minnesota

JEFF SESSIONS, Alabama
ORRIN G. HATCH, Utah
CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
LINDSEY GRAHAM, South Carolina
JOHN CORNYN, Texas
TOM COBURN, Oklahoma

BRUCE A. COHEN, *Chief Counsel and Staff Director*
BRIAN A. BENZCOWSKI, *Republican Staff Director*

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00004 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

CONTENTS

THURSDAY, JULY 15, 2010

STATEMENTS OF COMMITTEE MEMBERS

Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois 1
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 328

PRESENTERS

Brown, Hon. Scott, a U.S. Senator from the State of Massachusetts presenting Denise Jefferson Casper, a Nominee to be U.S. District Judge for the District of Massachusetts 5
Cochran, Hon. Thad, a U.S. Senator from the State of Mississippi presenting Carlton W. Reeves, Nominee to be U.S. District Judge for the Southern District of Mississippi 4
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois ppresenting Edmond E-Min Chang, a Nominee to be U.S. District Judge for the Northern District of Illinois 6
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona presenting Mary Helen Murguia, a Nominee to be U.S. Circuit Judge for the Ninth Circuit ... 7
Wicker, Hon. Roger F. a U.S. Senator from the State of Mississippi presenting Carlton W. Reeves, Nominee to be U.S. District Judge for the Southern District of Mississippi 4

STATEMENTS OF THE NOMINEES

Casper, Denise Jefferson, a Nominee to be U.S. District Judge for the District of Massachusetts 159
Questionnaire 161
Chang, Edmond E-Min, a Nominee to be U.S. District Judge for the Northern District of Illinois 68
Questionnaire 70
Kobayashi, Leslie E., a Nominee to be U.S. District Judge for the District of Hawaii 105
Questionnaire 106
Murguia, Mary Helen, a Nominee to be U.S. Circuit Judge for the Ninth Circuit 8
Questionnaire 11
Reeves, Carlton W., a Nominee to be U.S. District Judge for the Southern District of Mississippi 199
Questionnaire 200

QUESTIONS AND ANSWERS

Responses of Denise Jefferson Casper to questions submitted by Senators Coburn and Sessions 258
Responses of Edmond E-Min Chang to questions submitted by Senators Coburn and Sessions 263
Responses of Leslie E. Kobayashi to questions submitted by Senators Sessions and Coburn 268
Responses of Mary Helen Murguia to questions submitted by Senators Session, Kyl and Coburn 272
Responses of Carlton W. Reeves to questions submitted by Senators Sessions and Coburn 280

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00005 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Page

SUBMISSION FOR THE RECORD

Akaka, Hon. Daniel K., a U.S. Senator from the State of Hawaii, statement ... 294
Asian American Bar Association of the Greater Chicago Area, Sharon A. Hwang, President, Chicago, Illinois, May 10, 2009, letter 295
Asian American Justice Center, Karen K. Narasaki, President and Executive Director, Washington, DC, July 13, 2010, letter 298
Brown, Hon. Scott, a U.S. Senator from the State of Massachusetts, statement 301
Carson, Ellen Godbey, Honolulu, Hawaii, June 1, 2010, letter 302
Collins, Patrick M., Perkins Coie, Chicago, Illinois, June 7, 2010, letter 304
Devens, Vladimir, Meheula and Devens LLP, Attorneys at Law, Honolulu, Hawaii, May 5, 2010, letter 306
Djou, Hon. Charles K., a U.S. House of Representative from the State of Hawaii, statement 308
Filip, Mark, Kirkland & Ellis LLP and Affiliated Partnerships, Chicago, Illinois, May 20, 2010, letter 309
Hawaii Women Lawyers, Joanne L. Grimes, President, Honolulu, Hawaii, May 19, 2010, letter 310
Hoffman, David H., Chicago, Illinois, May 24, 2010, letter 311
Iuouye, Hon. Daniel K., a U.S. Senator from the State of Hawaii, statement ... 313
Kane, Micah A., Kaneohe, Hawaii, June 16, 2010, letter 316
Kaneshiro, Keith M., Attorney at Law, Honolulu, Hawaii, May 19, 2010, letter 318
Kerry, Hon. John F., a U.S. Senator from the State of Massachusetts, statement 320
Kirimitsu, Walter S., Honolulu, Hawaii, June 16, 2010, letter 322
Komeiji, John T., Senior Vice President & General Counsel, Hawaiian Telcom, Honolulu, Hawaii, May 21, 2010, letter 324
Lassar, Scott R., Sidley Austin LLP, Chicago, ILlinois, May 13, 2010, letter 326
National Asian Pacific American Bar Association, Joseph J. Centeno, President; Tina R. Matsuoka, Executive Director; John C. Yang, Co-Chair, Judiciary Committee and Wendy Wen Yun Chang, Co-Chair, Judiciary Committee, Washington, DC, July 9, 2010, joint letter 331
Price, Warren, III, Price Okamoto Himeno & Lum, Attorneys at Law, Honolulu, Hawaii, April 27, 2010, letter 336
Purpura, Michael M., Carlsmith Ball LLP, Honolulu, Hawaii, May 4, 2010, letter 338

WEDNESDAY, JULY 28, 2010

STATEMENTS OF COMMITTEE MEMBERS

Leahy, Patrick J., a U.S. Senator from the State of Vermont 341
Prepared statement 553

PRESENTERS

Brown, Hon. Sherrod, a U.S. Senator from the State of Ohio, presenting Kathleen M. O'Malley, Nominee to be U.S. Circuit Judge for the Federal Circuit 343
Norton, Hon. Eleanor Holmes, a Representative in Congress from the District of Columbia, presenting Beryl A. Howell, Nominee to be U.S. District Judge for the District of Columbia and Robert L. Wilkins, Nominee to be U.S. District Judge for the District of Columbia 345

STATEMENTS OF THE NOMINEES

O'Malley, Kathleen M., Nominee to be U.S. Circuit Judge for the Federal Circuit 347
Questionnaire 349
Howell, Beryl A., Nominee to be U.S. District Judge for the District of Columbia 413
Questionnaire 415
Wilkins, Robert L., Nominee to be U.S. District Judge for the District of Columbia 472

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00006 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Page

Wilkins, Robert L., Nominee to be U.S. District Judge for the District of Columbia—Continued
Questionnaire 473

QUESTIONS AND ANSWERS

Responses of Beryl A. Howell to questions submitted by Senators Sessions and Coburn 523
Responses of Kathleen M. O'Malley to questions submitted by Senator Sessions 531
Responses of Robert L. Wilkens to questions submitted by Senators Sessions and Coburn 540

SUBMISSION FOR THE RECORD

American Intellectual Property Law Association (AIPLA), Alan J. Kasper, President, Arlington, Virginia, May 19, 2010, letter 547
Intellectual Property Law Association of Chicago (IPLAC), James R. Sobieraj, Appointments Committee, Olivia T. Luk, Appointments Committee, and Edward D. Manzo, President, July 27, 2010, joint letter 549
Strauss, Hon. Paul, a U.S. Senator from the District of Columbia, prepared statement 556
Voinovich, Hon. George V., a U.S. Senator from the State of Ohio, prepared statement 560

WEDNESDAY, SEPTEMBER 15, 2010

STATEMENTS OF COMMITTEE MEMBERS

Durbin, Hon. Richard, a U.S. Senator from the State of Illinois 561
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 913

PRESENTERS

Durbin, Hon. Richard, a U.S. Senator from the State of Illinois presenting James E. Shadid, Nominee to be U.S. District Judge for the Central District of Illinois and Sue E. Myerscough, Nominee to be U.S. District Judge for the Central District of Illinois 567
Dodd, Hon. Christopher, a U.S. Senator from the State of Connecticut presenting Susan L. Carney Nominee to be U.S. Circuit Judge for the Second Circuit 562
Schock, Hon. Aaron, a Representative in Congress from the State of Illinois presenting Nominee to be U.S. District Judge for the Central District of Illinois 564
Chambliss, Hon. Saxby, a U.S. Senator from the State of Georgia presenting Amy Totenberg, Nominee to be U.S. District Judge for the Northern District of Georgia 565
Isakson, Hon. Johnny, a U.S. Senator from the State of Georgia presenting Amy Totenberg, Nominee to be U.S. District Judge for the Northern District of Georgia 566
Norton, Hon. Eleanor Holmes, a Representative in Congress from the District of Columbia presenting James E. Boasberg, Nominee to be U.S. District Judge for the District of Columbia and Amy B. Jackson, Nominee to be U.S. District Judge for the District of Columbia 566

STATEMENTS OF THE NOMINEES

Boasberg, James E., Nominee to be U.S. District Judge for the District of Columbia 664
Questionnaire 665
Carney, Susan L., Nominee to be U.S. Circuit Judge for the Second Circuit 569
Questionnaire 577
Jackson, Amy B., Nominee to be U.S. District Judge for the District of Columbia 707
Questionnaire 709

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00007 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Page

Myerscough, Sue E., Nominee to be U.S. District Judge for the Central District of Illinois 807
Questionnaire 808
Shadid, James E., Nominee to be U.S. District Judge for the Central District of Illinois 760
Questionnaire 761
Totenberg, Amy, Nominee to be U.S. District Judge for the Northern District of Georgia 619
Questionnaire 621

QUESTIONS AND ANSWERS

Responses of James E. Boasberg to questions submitted by Senators Coburn and Sesssions 869
Responses of Susan L. Carney to questions submitted by Senators Coburn and Sesssions 876
Responses of Amy B. Jackson to questions submitted by Senators Coburn, Franken and Sesssions 882
Responses of Sue E. Myerscough to questions submitted by Senators Coburn and Sesssions 892
Responses of James E. Shadid to questions submitted by Senators Coburn and Sesssions 899
Responses of Amy Totenberg to questions submitted by Senators Coburn and Sesssions 905

SUBMISSION FOR THE RECORD

Brady, Francis J., President, Connecticut Bar Association, New Britain, Connecticut, June 29, 2010, letter 912
Donoghue, Elizabeth, Chair, New York City Bar, New York, New York, September 22, 2010, letter 917
Lieberman, Hon. Joseph, a U.S. Senator from the State of Connecticut, prepared statement 918
Schock, Congressman Aaron, a Representative in Congress from the State of Illinois, prepared statement 920

ALPHABETICAL LIST OF NOMINEES

Boasberg, James E., Nominee to be U.S. District Judge for the District of Columbia 664
Carney, Susan L., Nominee to be U.S. Circuit Judge for the Second Circuit 569
Casper, Denise Jefferson, Nominee to be U.S. District Judge for the District of Massachusetts 159
Chang, Edmond E-Min, Nominee to be U.S. District Judge for the Northern District of Illinois 68
Howell, Beryl A., Nominee to be U.S. District Judge for the District of Columbia 413
Jackson, Amy B., Nominee to be U.S. District Judge for the District of Columbia 707
Kobayashi, Leslie E., Nominee to be U.S. District Judge for the District of Hawaii 105
Murguia, Mary Helen, Nominee to be U.S. Circuit Judge for the Ninth Circuit 8
Myerscough, Sue E., Nominee to be U.S. District Judge for the Central District of Illinois 807
O'Malley, Kathleen M., Nominee to be U.S. Circuit Judge for the Federal Circuit 347
Reeves, Carlton W., Nominee to be U.S. District Judge for the Southern District of Mississippi 199
Shadid, James E., Nominee to be U.S. District Judge for the Central District of Illinois 760
Totenberg, Amy, Nominee to be U.S. District Judge for the Northern District of Georgia 619
Wilkins, Robert L., Nominee to be U.S. District Judge for the District of Columbia 472

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00008 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

NOMINATIONS OF MARY HELEN MURGUIA, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT; EDMOND E-MIN CHANG, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; LESLIE E. KOBAYASHI, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII; DENISE JEFFERSON CASPER, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS; AND, CARLTON W. REEVES, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

THURSDAY, JULY 15, 2010

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. Richard J. Durbin, Chairman of the Committee, presiding.

Present: Senator Kyl.

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

Senator DURBIN. Good afternoon. I apologize for being a minute late. I was down at the Appropriations Committee.

This is the first nominations hearing we have held since the Elena Kagan hearing, and I hope it will be a little shorter.

We have five outstanding nominees with us today and I commend the President for sending their names. All of today's nominees have the support of their home State Senators, a testament to the President's commitment to working with the Senate to identify talented and successful people for the Federal bench.

The first panel will feature Mary Murguia—I hope I am pronouncing that correctly—a U.S. district court judge in Phoenix, who has been nominated to serve on the U.S. Court of Appeals for the Ninth Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00009 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

On the second panel, we will hear from four district court nominees: Edmond Chang, from my State of Illinois; Leslie Kobayashi of Hawaii; Denise Casper of Massachusetts; and Carlton Reeves of Mississippi.

At the beginning of the hearing, it is traditional for Senators to introduce nominees to the Committee from their States, and I will begin by introducing Edmond Chang, after my colleagues have had their chance, because I know many of them have pressing schedules.

So at this point, I would like to recognize Senator Kerry, if he would like to speak first before the committee, and please proceed.

Senator KERRY. Well, thank you very much, Mr. Chairman and Senator Kyl. It is a privilege to be able to be here to make an introduction and to be before this committee. I am delighted to be here with my colleague, Senator Wicker, who is also here for the purpose of an introduction.

It is my privilege today, Mr. Chairman, to be able to introduce to you Middlesex Deputy District Attorney Denise Jefferson Casper. And I want to thank Chairman Leahy, the Chairman of the whole committee, for scheduling the hearing so quickly on Denise's nomination.

It is my privilege, also, Mr. Chairman, to welcome her mother, who is sitting in back of me here; her husband, Marc. And I do not know if her two sons have arrived. I think they were going to arrive and maybe they were not able to get here. But she has twin sons, Harry and Jacob. They are the guys. There they are. So we are delighted to welcome them.

Mr. Chairman Senator Kyl, I can tell you, without reservation, that Denise is going to be just an outstanding judge, and she is a very worthy successor to her predecessor, the late Judge Reginald Lindsay, who passed away last year after a lengthy illness. He really was an inspiration to us all.

He rose from childhood in segregated Alabama to become the second black man ever appointed to the Federal bench in Massachusetts. And he loved the bench so much that, literally, just weeks before he passed away, he told a friend that he dreamed about returning to the bench every day. That is passion and dedication.

I can guarantee you that Denise brings the same kind of commitment to the bench, the same love for public service and for the administration of justice. And it would not surprise anybody that Judge Lindsay was a great mentor to her and to many in our state; and, therefore, no surprise, Denise has become a great mentor herself through her involvement with the Big Sisters program.

I am told by a number of people that anytime the Big Sisters has a gala or some other kind of fund-raiser, you will find her leading the charge, first to fill out one of the tables.

Senator Kirk and I both recommended Denise to President Obama for nomination after a very rigorous examination of her record, and those, I might add, of many other qualified candidates. And it was conducted by a selection Committee of leading members of the legal community of Massachusetts. That was a tradition that our colleague, Senator Kennedy, began. We continued it, many of the same participants.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00010 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

And their conclusion was the same as mine, that she will prove to be a first-rate jurist, an important addition to the district court.

I can tell you that everyone in the legal community raves about her work ethic, her drive, her exceptional management, and her brilliance. Kathy Weinman, former president of the Boston Bar Association, a lawyer on the council now, and a member of the selection committee, praised her respectful leadership qualities.

Chief judge, Judge Mark Wolf, of the district court, under whom she will serve, if confirmed, has nothing but the best to say about her. I will just tell you, very quickly, he said—he wrote us a letter, in fact, and said "Denise Casper is a distinguished lawyer with a demonstrated commitment to serving the public interest. My colleagues and I particularly recall her fine service as a Federal prosecutor. Her appointment would greatly contribute to our constant effort to give integrity to our Nation's promise of equal justice under law."

I do not know if this is relevant or not, Mr. Chairman, but in the district attorney's office, in which I previously served, it is reputed that she has a legendary laugh, is apparently not very subtle. You look at her and think she is very soft-spoken and if something funny were said, she would just kind of giggle at it. But I am told that throughout the office, everybody knows when she is there because of this laugh.

More importantly, she graduated from Harvard Law School. She is currently the second in command of the district attorney's office of Middlesex County, one of the largest in the country.

She was a prosecutor in the U.S. Attorney's Office; for a time, was the Deputy Chief of the Organized Crime Drug Enforcement Task Force. She was a clerk for the Massachusetts appeals court, and a private attorney in the firm of Bingham McCutchen, and a teacher at Boston University School of Law. That is a remarkable collection of accomplishments in a short span of time.

Middlesex District Attorney, my friend and somebody I have worked with closely, who is here, Gerry Leone, told me right away, when I called him for an opinion, that she will just be a star on the Federal bench.

And I will tell you that I had the privilege of serving in that office in the same job that she has now from 1976 to 1981, and so I have a special affection for her, but also an understanding of the job she has done.

So anyone who looks at her record, as I know you have, will understand her remarkable set of qualifications that she brings to this job, and I recommend that the Senate confirm her as quickly as possible.

Senator DURBIN. Senator Kerry, thank you very much.

I see that Senator Cochran has arrived, the senior Senator from Mississippi, and I know that he is the ranking Republican on the Senate Appropriations Committee, which is currently in session.

Senator Wicker, do you have a recommendation on whom should speak first?

Senator WICKER. Mr. Chairman, I believe we should proceed with the Ranking Member of the Appropriations Committee.

[Laughter.]

Senator DURBIN. Good judgment, Senator Wicker.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00011 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Senator Cochran.

Senator KERRY. Before he speaks, would the senior Senator and the Chair forgive me, could I be excused?

Senator DURBIN. We thank you very much for attending. We know your busy schedule. Thank you.

Senator KERRY. Thank you very, very much. I just do not want the Appropriations people to think I am running out on them.

Senator COCHRAN. Thank you, Mr. Vice President.

[Laughter.]

Senator COCHRAN. Mr. Chairman, thank you for your courtesy.

PRESENTATION OF CARLTON W. REEVES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

I am pleased to introduce to the Committee Mr. Carlton Reeves, who has been nominated by the President to serve as United States District Court Judge for the Southern District of Mississippi.

Mr. Reeves practices law in Jackson, Mississippi, where I practiced law for several years before being elected to the U.S. Senate.

He received his undergraduate degree from Jackson State University and his law degree from the University of Virginia. He has served as a clerk and staff attorney for the Mississippi Supreme Court and as the chief of the civil division in the U.S. Attorney's Office for the Southern District of Mississippi.

Mr. Reeves has been actively involved with Mississippi legal services and other community organizations in our state. He is well respected by his fellow lawyers and the general public.

Mr. Chairman, I am pleased to recommend this nominee for confirmation by the Senate.

Senator DURBIN. Thank you very much, Senator Cochran.

Senator Wicker.

PRESENTATION OF CARLTON W. REEVES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI BY HON. ROGER F. WICKER, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator WICKER. Thank you, Mr. Chairman and Mr. Distinguished Ranking Member. I am very pleased to join my senior Senator, Senator Cochran, in wholeheartedly endorsing the nomination of Carlton Reeves for the position of U.S. district court judge.

I might note that we are joined in the room today by Chairman Benny Thompson of Mississippi, who is here not as a witness, but to offer his support, also, and we appreciate the bipartisan nature in which our delegation is supporting this nominee.

Senator Cochran has mentioned the professional and scholastic achievements of Mr. Reeves. I think it is certainly important to the Senate that our nominees be qualified with regard to their scholastic background, their professional attainment, and, also, in their reputation for integrity.

I might note that, in that regard, Mr. Chairman, our nominee today, Mr. Reeves, as a student at the University of Virginia Law School, was honored with the Mary Claiborne and Roy H. Ritter

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00012 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

fellowship, which actually recognizes outstanding honor, character, and integrity.

He is certainly qualified in state and Federal practice. He has an outstanding reputation. This is a popular nomination with the bar, with the State as a whole, and with this delegation.

I commend the President for working with State leadership in moving this nominee forward, and I am pleased and proud to support the nomination of Carlton Reeves and believe he will be a credit to our State, to the Federal bench, and to this committee.

So thank you so very much.

Senator DURBIN. Thank you very much, Senator Wicker. And I thank both you and Senator Cochran. And, Congressman Thompson, thank you for coming over and joining us. It is good to see my colleague again.

The Senators from Mississippi can stay, if they wish, but I know they have a busy schedule and if they need to leave, we understand it.

We also have joining us at the table Senator Scott Brown of Massachusetts.

Senator Brown, you may proceed.

PRESENTATION OF DENISE JEFFERSON CASPER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS BY HON. SCOTT BROWN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator Brown. Thank you, Mr. Chairman and Ranking Member Kyl. It is good to be here and I appreciate, obviously, the opportunity to speak to the Judiciary Committee, and thank you for the opportunity to introduce Denise Jefferson Casper of Massachusetts, the nominee for the United States District Court for the District of Massachusetts.

I offer my congratulations to her and her family and all of those who are here to share this special day with her.

My dear friend, District Attorney Gerry Leone is here and it is good to see him.

And I know that Ms. Casper has worked very hard to get to this point in her career. I have met with her. I have done my due diligence. I have spoken with many of my former colleagues and folks that I practiced with when I was a practicing member of the bar and they all spoke very highly of her.

As a matter of fact, one of my dear friends actually tried to hire her on three separate occasions, and he is a tough person to please. And I can also say that in the 2008 article in the *Massachusetts Lawyers Weekly*, she was described as absolutely tireless. And I quote, the quote is "being a courteous and humble woman, but also a zealous and effective advocate." And I certainly cannot ask for anything more in a judge than to be somebody who is fair and zealous and tireless.

I, too, want to commend the President for moving this—it will probably be national news, but I do want to commend the President—that was a joke.

[Laughter.]

Senator Brown. You have to have a sense of humor around here sometimes. I want to congratulate him for moving her forward.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00013 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

As you know, she is also very active in her community, volunteering and having served in leadership roles in the Women's Bar Association, Big Sister Association of Greater Boston, the American Bar, and many other noteworthy organizations.

She has trained the next generation of advocates and judges as an instructor at BU Law School, and a graduate of Wesleyan and Harvard Law School.

Ms. Casper currently serves, as I mentioned, as a deputy district attorney for the Middlesex district attorney's office and she oversees very important work, working with witness bureau, the cyber protection program, the PACT unit, which investigates public corruption, organized crime and financial crime.

She has a very long and storied career for somebody so young, and I wanted to make a point to come here and, with Senator Kerry, offer our bipartisan support for this nominee, and I am hopeful that we can move on this nomination very, very quickly.

So I thank you both for your courtesy in allowing me to speak, and I am certainly available if you have any questions.

Senator DURBIN. Thank you very much, Senator Brown. Senator Kerry spoke earlier and we will make sure that your entire statement will be made part of the record. Thank you for joining us today. The best parts will be made part of the record, we promise you that.

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

I also want to note that Senator Inouye and Senator Akaka had planned on attending. Senator Inouye, I know, is presiding one floor down over the Senate Appropriations Committee, where he chairs. It is an awesome responsibility and he, unfortunately, will not be able to join us. But his statement in support of the nominee from Hawaii will be made a part of the record.

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

PRESENTATION OF EDMOND E-MIN CHANGE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS BY HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. At this point, I would like to take the prerogative of the chair to introduce one of the nominees who will be before us today.

Ed Chang is an accomplished Federal prosecutor in the State of Illinois, chief of appeals in the criminal division of the U.S. attorney's office in Chicago. He works closely with our U.S. Attorney, Patrick Fitzgerald, who has written a strong letter of recommendation.

As a Federal prosecutor for over a decade, Ed Chang has seen it all. He has prosecuted crimes involving guns, gangs, drugs, fraud, extortion, and child exploitation; supervised over 300 appeals; and, worked on major cases involving terrorism and public corruption.

Mr. Chang is a native of New York City, but had the good sense to move to Chicago in 1991 to attend Northwestern University Law

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00014 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

School, where he graduated Order of the Coif and served on the law review.

He began his legal career as a judicial law clerk, first, for Sixth Circuit Judge James Ryan, nominated by President Reagan, and then for highly regarded Chicago District Court Judge Marvin Aspen, an appointee of President Jimmy Carter.

Before joining the U.S. attorney's office in 1999, Mr. Chang worked for one of Chicago's most respected law firms, Sidley Austin, where he specialized in employment and labor law. Throughout his career, he has had a strong commitment to pro bono work and to bar association and mentoring activities.

He has served as an adjunct law professor at Northwestern Law School since 1996, teaching a class on civil rights litigation.

Now, I have a bipartisan merit selection committee, which I set up last year, to consider applications for these vacancies. And I might add that Mr. Chang was chosen in a previous competition for an opening by a Republican nominating committee, and, in this case, was chosen again by a Democratic committee. It is quite a testament to the fact that he is not political and he does bring extraordinary credentials to this aspiration.

It is an historic nomination. When he is confirmed, Mr. Chang will be the first Asian-American U.S. district court judge in Illinois, and only the second in the Nation between the east and west coasts.

I now ask my colleagues—well, I will after I first recognize Senator Kyl, who I believe has a similar introduction.

Senator Kyl.

PRESENTATION OF MARY HELEN MURGUIA, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT BY HON. SENATOR KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman. It is my pleasure to introduce to the Committee Mary Murguia. Judge Murguia is currently a Federal district judge in the State of Arizona. She has served on the bench there since the year 2000, and she has been nominated by the President to serve on the ninth circuit court of appeals.

Senator McCain joins me in urging the committee's strong support for her nomination, but he could not be here today.

Just a few words to introduce Judge Murguia to the committee, though, of course, her extensive resume is on file with us.

In the 10 years that she has served on the bench in the State of Arizona, she has presided over nearly 4,000 cases to verdict or judgment; has presided over nearly 60 trials, including over 50 jury trials, to verdict.

Mr. Chairman, I talked to her colleagues on the Federal district court bench in Arizona and litigants who appeared before her and asked whether they believed that she gave every litigant a fair chance in court; and, to her person, they all said that her reputation is one of fairness, of equity, of blind justice, of doing the best that she can in each case, and, in all cases, approached the job of judging with exactly that kind of spirit that we would ask for in the judges that we have before us.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00015 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Her experience before being on the Federal district court was primarily in the area of service in the Department of Justice and in the office of the U.S. Attorney.

But her most recent experience, from 1999 and 2000, was to serve as the director of the executive officer for United States attorneys. And as everyone here who is familiar with this knows, that is the individual responsible for the oversight and support of the 94 different offices of U.S. attorneys around the United States, about 5,000 people in all, plus another 5,000 support staff and administration and appropriation of about $1 billion.

Prior to that time, as I said, she served in the United States attorney's office for the district of Arizona, among other things, arguing 15 cases and being involved in over 20 appeals before the ninth circuit. She was deputy chief of the criminal section for 4 years, from 1994 to 1998, and had a variety of other experience in that office.

I would note that her very first experience out of school was in the county attorney's office in Kansas, where she was, for 5 years, in there as the senior trial attorney in the sex crimes unit and trial attorney in the major crimes division.

Just one other note of personal background, Mr. Chairman. Judge Murguia's brother, Carlos, is the first Latino to serve as a Federal district judge in the State of Kansas and the two Judge Murguias—Judge Murguia, I should also point out, Judge Mary Murguia, was the first Latina to be appointed to the Federal district court in Arizona, and she and her brother, Carlos, are the only brother and sister sitting as Federal judges in the United States.

I do not think that she will be disqualified from that if she moves on up to the ninth circuit court of appeals. We will see that they retain that distinction.

In any event, it is with great deal of pleasure that I urge her confirmation before this Committee and look forward to her testimony.

Senator DURBIN. Thank you very much, Senator Kyl.

Now, since we have a nominee for the U.S. District Court, Judge Murguia——

Senator KYL. Circuit Court.

Senator DURBIN. Pardon me. Circuit court—and then district court nominees, we will have two panels.

The first panel will be Judge Murguia, and I ask her, if she would, please, approach the table. And we have a standard oath that is administered.

[Nominee sworn.]

Senator DURBIN. Thank you. Please be seated. Let the record reflect that the nominee answered in the affirmative.

The floor is yours.

STATEMENT OF HON. MARY HELEN MURGUIA, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Judge Murguia. Thank you, Mr. Chairman. Thank you, Senator Kyl. I do not have any formal opening statement. There are some acknowledgments that I would like to make, if I can.

First, I would like to thank President Obama for this honor, for his trust and confidence in me in nominating me to this position as judge on the ninth circuit court of appeals.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00016 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Also, I would like to thank Senator Kyl for his extremely kind and generous remarks in his introduction of me here today. I would like to thank both Senator Kyl and Senator McCain for their support of me throughout this process. I am very grateful to them both.

There are two people who are not here today that I would like to recognize. Those two people are my parents, Alfredo and Amalia Murguia. They were actually here 10 years ago almost to the day for my confirmation hearing for the district court position.

Unfortunately, my father has passed away and my mother suffers from Alzheimer's and could not be here. But both my parents came to this country from Mexico to pursue the American dream, and my father worked for over 35 years as a steel construction worker for the Kansas City, Kansas Structural Steel Company. My mom and my father raised seven kids in a very working class neighborhood of Kansas City, Kansas.

And six of their seven children attended college. Four of us went on to graduate from law school. And my presence here today before this distinguished is really an honor to them and a tribute to them.

I do have some family members that are here today, if I could introduce them. First, I guess I will start with the judge, my brother, Carlos Murguia. He is a district court judge in Kansas. His wife, Ann, who is a council member for the unified government in Kansas City could not be here. She is my sister-in-law. They have three children, Wyatt, Thomas and Isabella Grace, who also couldn't be here.

My brother, Alfred, lives and works in Kansas City. He has three children who are a little bit older. In fact, Senator Durbin, his oldest child—I'll say his oldest kid—Ryan, who is my nephew, I think, is on his way here. He recently graduated from Northwestern Law School and is studying vigorously for the bar exam, which is in less than 2 weeks, and he will be starting with the DOJ honors program in the fall.

His brother, Nick, lives and works in Kansas City. He graduated from Tulsa University. My niece, Kelly Murguia, just recently graduated from Brown University. She graduated from Brown in May and she is undergoing a very intense program for Teach for America as we speak and will be starting in that program this fall.

I would also like to introduce my brother, Ramon, who is a lawyer in Kansas City. He is on the board of trustees for the Kellogg Foundation, and really the first in our community to graduate from Harvard Law School. His wife, Sally, who is a lawyer, could not be here today. He has two children, my nephew, Miguel, and his sister, my niece, Amalia, also could not be here today. But all the kids are here in spirit, and I appreciate their support.

My sister, Janet, is president and CEO of an Hispanic civil rights organization based here in Washington, D.C., and she is my twin sister and I am glad that she is here supporting me, as well.

And there are two people who couldn't be here, my sister, Rosemary Murguia, my sister, Martha Hernandez. They care for my mother and, unfortunately, could not be here today.

I have a number of friends here today who've traveled here. My friend, Bea Witzleben, who is an assistant U.S. attorney in Philadelphia. We worked at the Department of Justice together. My

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00017 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

friend Margaret Epler, who works for the ninth circuit, is a lawyer for the ninth circuit court of appeals.

My cousin, Lloyd Murguia, who is currently working for Congressman Gonzalez out of Texas. And I know that there are very—a number of former associates of mine with the Department of Justice, and a law school friend of mine here today, and there are numerous friends and family who are watching and I appreciate their support.

Thank you for letting me make those acknowledgments. I'm ready to answer any questions that you all might have.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mary Helen Murguia

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

   United States Circuit Judge for the Ninth Circuit

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

   Sandra Day O'Connor United States Courthouse, Suite 525
   410 West Washington Street, SPC 53
   Phoenix, Arizona 85003-2154

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

   1960; Kansas City, Kansas

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

   1982 – 1985, University of Kansas School of Law; J.D., 1985
   1978 – 1982, University of Kansas; B.S. & B.A., 1982

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

   2000 – Present
   United States District Court for the District of Arizona
   Sandra Day O'Connor United States Courthouse, Suite 525
   410 West Washington Street, SPC 53
   Phoenix, Arizona 85003-2154
   Unites States District Judge

66720.001

1999 – 2000
Executive Office for United States Attorneys
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Director (1999 – 2000)
Principal Deputy Director (1999)
Counsel to Director's Staff (1998 – 1999)

1990 – 2000
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
Deputy Chief, Criminal Section (1994 – 1998)
Assistant United States Attorney (1990 – 2000)

1985 – 1990 & 1984
Wyandotte County District Attorney's Office
710 North 7th Street
Kansas City, Kansas 66101
Assistant District Attorney (1985 – 1990)
Legal Intern (summer 1984)

1982 & 1983
Wyandotte County Office of the Clerk of the Court
710 North 7th Street
Kansas City, Kansas 66101
Assistant Deputy Clerk (summers)

Other Affiliations (uncompensated)

1995 – 1998
Arizona Foundation for Women
2828 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Board Member

1996 – 1998
Arizona Pilot Parent Partnerships
(now known as Raising Special Kids)
5025 East Washington Street, Suite 204
Phoenix, Arizona 85034
Executive Board Member

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00020 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.002

1994 – 1997
St. Thomas More Society
c/o Maria Salapska, Esq.
3001 East Camelback Road, Suite 120
Phoenix, Arizona 85016
Board Member

1989
United Way of Wyandotte County, Kansas
434 Minnesota Avenue
P.O. Box 17-1042
Kansas City, Kansas 66117
Assistant Treasurer

1987 – 1990
MANA de Kansas City National Latina Organization
2100 Metropolitan Avenue
Kansas City, Kansas 66106
Vice President

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

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

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

   Kansas University Women's Hall of Fame, Honoree (2010)
   Hugo L. Black Chapter, Phi Alpha Delta Law Fraternity, International (2002)
   Chief United States Postal Inspector Award (1997)
   Hispanic American Law Student Association, President (1984)
   American Business Women's Association Academic Scholarship (1982)
   William Allen White School of Journalism and Mass Communication, Communications Law Scholarship (1980)
   Sigma Delta, Spanish Honorary Society (1979 – 1982)

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

   American Bar Association
   Arizona Women Lawyers Association

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00021 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.003

Association of Trial Lawyers of America
Association of Women Lawyers of Greater Kansas City
Federal Bar Association
Federal Judges Association
Hispanic National Bar Association
Kansas District Attorneys Association
Los Abogados Hispanic Lawyers Association
National District Attorneys Association
Ninth Circuit Capital Case Committee
St. Thomas More Society
Board of Directors (1994 – 1997)
Sandra Day O'Connor Inn of Court
State Bar of Arizona

10. **Bar and Court Admission**:

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

Kansas, 1986 (membership lapsed after 1990 upon moving to Arizona)
Arizona, 1993 (no lapse in membership)

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

United States Court of Appeals for the Ninth Circuit, 1991
United States District Court for the District of Arizona, 1993

There has been no lapse in membership.

11. **Memberships**:

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

University of Kansas School of Law
Founding Member, Women's Advisory Council (2008)
University of Kansas School of Law
Member, Board of Governors (2005 – 2007)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00022 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.004

Arizona Foundation for Women
Director (1985 – 1998)
Arizona Pilot Parent Partnerships
Executive Board Member (1996 – 1998)
Civic Leadership Training Council
Member, Class II (1987 – 1988)
United Way of Wyandotte County, Kansas

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

To my knowledge, none of the organizations listed currently discriminates or formerly discriminated.

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

To respond to the questions below, I searched my electronic calendar, electronic and physical records I have kept of speeches and presentations, and my memory.

The material below also includes responsive results of searches for the term "Mary Murguia" on the following websites:

1. American Business Women's Association
2. Arizona Foundation for Women
3. Arizona Women Lawyer's Association
4. Civic Leadership Training Council
5. MANA de Kansas City National Latina Organization
6. Raising Special Kids
7. St. Thomas More Society
8. United States Courts
9. United States Department of Justice
10. United Way of Wyandotte County, Kansas
11. University of Kansas
12. University of Kansas School of Law
13. Wyandotte County Unified Government

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00023 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.005

The material below also includes responsive results of the following searches:

Lexis Nexis & Westlaw searches:
-An "all news" search for "Mary pre/2 Murguia." Any article which referenced responsive material not previously identified was further investigated. The same search was conducted in Westlaw "all news." Google, YouTube and Lexis Nexis searches on the individual materials and events were performed. If those searches produced new materials not previously identified, that material was added.

YouTube searches:
-A YouTube search for "Mary Murguia" was performed. The single responsive hit was added to this response. An individual YouTube search was conducted for every panel or speech identified on this response for which no transcript or video had been identified.

Google searches:
-A search for "Mary Murguia -ninth -circuit" (to filter out hits related to my nomination) was conducted and produced approximately 394,000 hits. Approximately 300 of these hits were reviewed. An individual Google search was performed on any speech, panel, or article identified in this response for which no video or transcript had been identified.

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

A Tribute to Ann Dooley, 38 TULSA L. REV. ix, xii-xiii (2002). Copy supplied.

Message from the Director *in United States Attorneys Annual Statistical Report Fiscal Year 1999*, Executive Office for United States Attorneys (2000), available at http://www.justice.gov/usao/reading_room/reports/asr1999/99statrpt.pdf (last accessed Apr. 15, 2010).

I may have been listed as an official author of other reports in my capacity as Director of the Executive Office for United States Attorneys during my tenure from 1999-2000, but I have been unable to specifically identify them.

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

I was a member of the Committee that produced a video entitled "B.J. Learns About Federal and Trial Court," NCJ 139730, and the accompanying instructor's guide, NCJ 183473 as a resource for Native American children required to testify

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00024 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.006

in court (Dec. 1996). The project was sponsored by the United States Attorney's Office for the District of Arizona. I do not have a copy of the video or the instructor's guide. A summary of the project is available at http://www.ojp.gov/ovc/publications/infores/bjcourtprep/print_text.html (last visited Apr. 15, 2010).

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

Late February 1990 – I testified before the Kansas State Senate Judiciary Committee regarding amendment of the state sodomy law (SB 687), which later was codified at *Laws of Kansas* 1990, page 929, ch. 149, enacted May 18, 1990. I have been unable to obtain a transcript of this testimony.

March 23, 2000 – Statement (Long and Short) of Mary H. Murguia, Director, Executive Office for United States Attorneys, before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies. Copy supplied.

July 25, 2000 – I testified before the United States Senate Committee on the Judiciary in connection with my nomination to the United States District Court for the District of Arizona. Copy supplied.

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

I have spoken at a number of Continuing Legal Education Seminars for the Arizona State Bar and at a number of community events relating to Hispanic Heritage month or the Hispanic community, where I speak about my background, education, and job experiences. I have supplied the notes that I use for such events. The list below includes all specific speeches I have been able to identify or recall and I have indicated where I offered remarks based on these standard notes. In addition, I often give remarks at the Naturalization Ceremonies over which I preside, for which I have supplied my standard notes.

April 29-30, 1995 – Roundtable Discussion Conference, Women Judges' Fund for Justice, the United States Department of Justice, and the State Justice Institute. I

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00025 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.007

found reference to this item in searching online databases although I do not independently recall it. No copy of remarks.

March 15, 2000 – Evaluation and Review Staff AUSA Team Leader Training. National Advocacy Center, Columbia, South Carolina. Speaker. Notes supplied.

March 28, 2000 – Special Program in Observance and Celebration of National Women's History Month, Washington, DC. Speaker. Notes supplied.

May 18, 2000 – Management Issues Seminar, National Advocacy Center, Columbia, South Carolina. Speaker. Notes supplied.

May 25, 2000 – National Firearms Trafficking Training Conference, Crystal City, Virginia. Speaker. Notes supplied.

May 31, 2000 – Weed and Seed Law Enforcement and Prosecution Conference, New Orleans, Louisiana. Speaker. Notes supplied.

June 21, 2000 – 2000 United States Attorneys National Conference, Keystone Colorado. Remarks to attendees as Director of the Executive Office for United States Attorneys. Notes supplied.

March 30, 2001 – Panel Discussion: Women in Law. University of Kansas School of Law, Lawrence, Kansas. Panelist. Transcript at 49 Kan. L. Rev. 847.

November 3, 2001 – Arizona Women Lawyers Association, Annual Conference. Phoenix, Arizona. Speaker. Introductory remarks. I had been recently appointed to the federal district court and I spoke about my background and experience and answered questions from the audience. No copy of remarks.

April 5, 2002 – Arizona State Bar CLE program, "Successful Strategies for Winning Commercial Cases in Federal Courts." Speaker. No copy of remarks.

June 7, 2002 – Arizona State Bar Convention Employment Seminar, Tucson, Arizona. Panelist. No copy of remarks.

February 1, 2003 – University of Michigan Law School, Ann Arbor, Michigan. Juan Tienda Banquet, minority law student event. Keynote speaker. I spoke from my standard Hispanic community event notes.

June 13, 2003 – Arizona State Bar Young Lawyers Division, Phoenix, Arizona. Panelist. No copy of remarks.

July 18, 2003 – Kansas Women Lawyers Conference, Louisburg, Kansas. Panelist. No copy of remarks.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00026 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.008

August 28, 2003 – Four Corners United States Attorney Conference, Albuquerque, New Mexico. Panelist. No copy of remarks.

September 5-6, 2003 – District Judges Meeting, Sedona, Arizona. Presentation: "Managing Federal Death Penalty Cases: Lessons Learned from United States v. Mitchell." Presentation supplied.

April 4, 2004 – Arizona State University, Tempe, Arizona. Hispanic Mother/Daughter Program. Speaker. I spoke from my standard Hispanic community event notes.

June 2004 – Annual National Conference, National Council of La Raza (NCLR), Phoenix, Arizona. Latina Brunch panel presentation: "Sister Act II" with Janet Murguia and United States Congresswomen Loretta and Linda Sanchez. DVD recording supplied.

October 15, 2004—Hispanic Women's Corporation Conference. Phoenix, Arizona. Speaker. News account supplied.

April 20, 2005 – Arizona State University, Tempe, Arizona. Hispanic Mother / Daughter Program. Speaker. I spoke from my standard Hispanic community event notes.

August 11, 2005 – City of Phoenix, Hispanic Network Breakfast, Hispanic Heritage Month event. Phoenix, Arizona. Speaker. I spoke from my standard Hispanic community event notes.

September 15, 2005 – National Center for State Courts Ninth National Court Technology Conference, Seattle, Washington. Presentation: "Litigation Support Systems in Death Penalty Trials." Notes supplied.

October 14, 2005 – Phoenix College, Youth Leadership Fair. Phoenix, Arizona. Presentation to high school students from across the state of Arizona. Panelist. An announcement of the event is attached.

November 15, 2006 – Arizona State University College of Law, Tempe, Arizona. Judicial Clerkship Panel. Panelist. No copy of remarks.

January 30, 2007 – Ninth Circuit Midwinter Workshop, Santa Barbara, California. Presentation: "Managing Federal Death Penalty Cases: Observations from the District Court." Presentation supplied.

March 28, 2007 – Arizona State University College of Law, Tempe, Arizona. Guest Lecturer, Federal Prosecution. No copy of remarks.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00027 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.089

April 18, 2008 – Valle Del Sol Peacemaker Breakfast, Phoenix, Arizona. Celebrating the opening of a multicultural events center. Speaker. I spoke from my standard Hispanic community event notes.

October 9, 2008 – Northwestern University School of Law, Hispanic Heritage Month, Latino Law Students Event. Chicago, Illinois. Panelist. I spoke from my standard Hispanic community event notes.

October 18, 2008 – 12th Annual National Latino Law Student Conference, Albuquerque, New Mexico. Speaker. I spoke from my standard Hispanic community event notes.

March 20, 2009 – State Bar of Arizona, Minority Bar Convention, Pro Bono Opportunities Panel. Phoenix, Arizona. Panelist. No copy of remarks.

November 6, 2009 – "Court Works - Kids to Court" program, United States District Court, Phoenix, Arizona. Remarks to General Assembly. Notes supplied.

December 10, 2009 – Investiture of Dennis Burke as United States Attorney for the District of Arizona, Phoenix, Arizona. Speaker. Notes supplied.

February 25, 2010 – The Emily Taylor & Marilyn Stokstad Women's Leadership Lecture sponsored by the KU Hall Center For The Humanities at the University of Kansas, Lawrence, Kansas. Speaker. The program was entitled "An Evening With Janet and Mary Murguia." A recording is available at http://www.youtube.com/watch?v=Hw8WedQdnkE (last visited Apr. 15, 2010). My remarks also were broadcast by Kansas Public Radio on March 28, 2010.

During my service as an Assistant United States Attorney in Arizona from 1990 to 1998, I occasionally attended events on behalf of the Office or the United States Attorney, such as local crime task force meetings and community domestic violence meetings.

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

Lawrence Journal-World, May 1, 1989, "Tonganoxie Man Sentenced in KC for Kidnap, Rape."

The Kansas City Star, April 30, 1995, "A Proud Family Tradition."

The Associated Press State & Local Wire, Oct. 7, 1999, "Prosecutors in Loomis, Fargo Case Honored."

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00028 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.010

Charlotte Observer, Oct. 7, 1999, "Prosecutors in Heist Case Get Award."

Kansas City Business Journal, Feb. 9, 2001, "Raising the Bar."

Lawrence Journal-World, Aug. 11, 2001, "Murguia to Give KU's Public Image a Facelift"

The Kansas City Star, Oct. 16, 2003, "Prosecutor Nick Tomasic to Step Down After 8 Terms."

The Kansas City Star, Feb. 8, 2004, "Chain of Support; Each Sibling Forms a Link in the Murguia Chain."

The Arizona Republic, Oct. 16, 2004, "Conference Focuses on Role Change for Latinas."

The Arizona Republic, Mar. 12, 2005, "Despite Security, Fear Lingers in Court with Many Threats Made, Officials Worry About Similar Event in Valley."

Arizona Business Gazette, Aug. 31, 2006, "Judges Mentor Minority Interns."

The Arizona Republic, Sept. 2, 2006, "Judges Mentor Minority Interns; Snell & Wilmer Helps Program to Aid Diversity."

Alpha Phi Quarterly, Vol. 119, No. 4, "Alpha Phi Salutes Distinguished Alumnae," Fall 2007.

I may have provided other brief quotations to media that I have not been able to identify in my capacities as a state and federal prosecutor with respect to particular cases or during my service as Director of the Executive Office of United States Attorneys with respect to Department of Justice initiatives.

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

In 2000, I was appointed to the United States District Court for the District of Arizona, a position I currently hold.

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

I have presided over 3,819 cases to verdict or judgment. Of these, 59 went to trial; 52 were jury trials and 7 were bench trials.

i. Of these, approximately what percent were:

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00029 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.011

jury trials:	88%
bench trials:	12%
civil proceedings:	68%
criminal proceedings:	32 %

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. United States v. Mitchell, No. CR-01-1062-PCT-MHM (D. Ariz. 2003)

This case concerned the killing and dismemberment of an elderly woman and her nine year-old granddaughter following a carjacking that occurred on the Navajo Nation Indian Reservation in October 2001. The United States charged the defendant, a Navajo, with first degree murder felony murder, carjacking resulting in death, kidnapping, and several counts of robbery. Before trial, the government filed a notice that it intended to seek the death penalty against the defendant based on the charge of carjacking resulting in death. The jury ultimately convicted the defendant on all counts, and the trial proceeded to the penalty phase. The defendant declined to be present for the penalty phase, but his attorneys presented mitigating evidence and made arguments on his behalf. The jury unanimously found that all statutory aggravating factors were present for each victim, along with one mitigating factor for each victim. After weighing the relevant factors, the jury recommended a sentence of death. I accepted the jury's recommendation and sentenced the defendant to death. The Court of Appeals affirmed. See United States v. Mitchell, 502 F.3d 931 (9th Cir. 2007). To the best of my knowledge, this was the first direct death penalty sentence (non-habeas) affirmed by the Ninth Circuit since passage of the Antiterrorism and Effective Death Penalty Act of 1996.

Counsel for Plaintiff: Vincent Q. Kirby Kurt Michael Altman, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004, 602-514-7500. Counsel for Defendant: John M. Sears, Law Offices of John M Sears PC, 107 North Cortez Street, Ste. 104, Prescott, Arizona 86301, 928-778-5208; Gregory A. Bartolomei, Jeffrey A. Williams, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00030 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.012

2. Bard Peripheral Vascular, Inc. and David Goldfarb, M.D. v. W.L. Gore & Associates, No. CV-03-0597-PHX-MHM, 586 F. Supp. 2d 1083 (D. Ariz. 2008)

This case concerned a longstanding dispute over the ownership of a patent for a synthetic vascular graft. For 28 years, the Parties fought for control of the disputed medical device before the United States Patent and Trademark Office ("PTO") and the Federal Circuit. The patent finally issued in the name of the plaintiffs in 2002, and shortly thereafter the plaintiffs sued for patent infringement. To establish the parameters of the patent, I conducted a hearing pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996) and issued a claim construction order that defined the meaning of the disputed claims and accepted the report and recommendations of the Special Master. 2006 WL 2802200 (D. Ariz. Sept. 16, 2006). The case then progressed to a 6-week jury trial. The jury returned a verdict for the plaintiffs on all counts, including a finding that the defendant was a "wilful infringer." The jury assessed damages totaling approximately $185,000,000. After the jury returned its verdict, I held an evidentiary hearing on the issue of inequitable conduct and issued a 90-page order rejecting the defendant's contention that the plaintiffs failed to meet their duty of candor, good faith, and honesty to the PTO. 573 F. Supp. 2d 1170 (D. Ariz. 2008).

At the post-trial stage, I granted the plaintiffs' motion for enhanced damages under 35 U.S.C. § 284. In addition, based on the Supreme Court's recent opinion in eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 338 (2006), I declined to impose a permanent injunction on the defendant from continuing to produce its infringing products. Instead, I determined that the plaintiffs could be adequately compensated by way of a compulsory license. 586 F. Supp. 2d 1083 (D. Ariz. 2008).

Counsel for Plaintiffs: Steven C. Cherny, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, 212-446-4800. Maximilian A. Grant, Latham & Watkins, LLP, 555 11th Street NW, Ste. 1000, Washington, DC 20004, 202-637-2200. Counsel for Defendants, Brett L. Dunkelman, Osborn Maledon PA, 2929 North Central Avenue, Ste. 2100, Phoenix, Arizona 85012, 602-640-9000; James W. Gould, David H. Pfeffer, Locke Lord Bissell & Liddell LLP, 3 World Financial Center, New York, New York 10281, 212-415-8600. Special Master: James M. Amend, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois, 60601, 312-861-2133.

3. Societe Civile Succession Richard Guino v. Beseder, Inc., No. CV-03-1310-PHX-MHM, 2007 WL 3238703 (D. Ariz. Oct. 31, 2007)

This case resolved a century-long dispute regarding the copyrights to a number of sculptures created by Pierre-Auguste Renoir and one of his assistants, Richard Guino. The descendants of both sculptors sued each other, disputing whether the items were copyrighted or in the public domain. Claims for false advertising

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00031 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.013

under the Lanham Act and for state law unfair competition claims relating to a different series of sculptures were also involved. I presided over a jury trial for copyright infringement damages and the other claims. The Court of Appeals affirmed in two opinions. Societe Civile Succession Richard Guino v. Renoir, 305 Fed. Appx. 334 (9th Cir. 2008); Societe Civile Succession Richard Guino v. Renoir, 549 F.3d 1182 (9th Cir. 2008).

Counsel for Plaintiff: Richard William Morris, Morris Law Firm, PLLC, 3951West Grand Avenue, Ste. 203, Surprise, Arizona 85374-2436, 623-583-1040. Counsel for Defendants: Ray Kendall Harris, Fennemore Craig PC, 3003 North Central Avenue, Ste. 2600, Phoenix, Arizona 85012-2913, 602-916-5000; David Paul Steiner, David Steiner & Associates PLC, 1925 Century Park E, Ste. 2350, Los Angeles, California 90067-2737, 310-557-8422.

4. In re LifeLock, Inc., Mktg. and Sales Practices Litig., MDL Docket No. 08-1977, 2009 WL 2222711 (D. Ariz July 24, 2009)

This nationwide class action lawsuit concerning consumer fraud claims consists of 14 related federal cases that were transferred to my court by the United States Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. § 1407. To facilitate an efficient resolution of this matter, I issued a Practice and Procedure Order, which, among other things, directed the plaintiffs to provide briefing as to the appointment of an interim lead counsel pursuant to Fed. R. Civ. P. 23(g). I then presided over an Initial Scheduling Conference where I heard oral arguments on the appointment of interim lead counsel. Following the hearing, I issued an order designating interim lead counsel for the plaintiffs. I then issued an Amended Scheduling Order, which set forth a case management schedule, including deadlines for the filing of a consolidated amended complaint, motions to dismiss, fact and expert discovery, class certification, and summary judgment. Furthermore, when the case was first transferred to my court, there were several pending motions for remand. I determined that the most appropriate way to resolve the pending remand motions was to have the Parties who wished to participate in seeking remand file a single consolidated motion, rather than filing potentially redundant individual motions. Only two plaintiffs joined the single consolidated motion for remand, which was unopposed by the defendants. I resolved the remand issue by ruling that federal jurisdiction was lacking because the cases failed to meet the rule announced by the Supreme Court in Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1 (1983) and Grable & Sons Metal Prods. v. Darue Eng'g & Mfg., 545 U.S. 308 (2005).

Lead Counsel for Plaintiffs: Robert B. Carey, Leonard W. Aragon, Hagens Berman Sobol Shapiro PLLC, 11 West Jefferson Street, Ste. 1000, Phoenix, Arizona, 85003, 602-840-5900. Counsel for Defendants: Peter A. Antonucci, Greenberg Traurig LLP 200 Park Avenue New York, New York 10166 212-801-9200; Pamela M. Overton, Greenberg Traurig LLP, 2375 East Camelback Road Ste. 700, Phoenix, Arizona 85016, 602-445-8000.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00032 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.014

5. United States v. James, No. CR-03-00900-PHX-MHM (D. Ariz., Mar. 01, 2007)

The Government charged the defendant with multiple crimes, including first-degree murder, felony murder, robbery, two counts of aggravated sexual abuse, and five counts of use of a firearm during a crime of violence. After determining that the defendant should be tried as an adult, I declined to hold an additional juvenile-transfer hearing when the Government added additional charges to the indictment. The jury convicted the defendant, and I sentenced him to life imprisonment for felony murder, second degree murder, and two counts of aggravated sexual abuse; 180 months for robbery; and 300 months for using a gun in the felony murder, second degree murder, and robbery, to be served concurrently with each other but consecutively to all other sentences. On appeal, the Ninth Circuit affirmed my decision not to hold an additional juvenile-transfer hearing and affirmed the defendant's convictions and sentences for the felony murder, aggravated sexual abuse, and related gun charges. United States v. James, 556 F.3d 1062 (9th Cir. 2007). The Ninth Circuit, however, determined that the defendant's convictions for second-degree murder and robbery violated the double-jeopardy clause because those crimes were lesser included offenses of felony murder, and remanded so that I could reconsider the defendant's sentence in light of that holding.

Counsel for Plaintiff: Vincent Quill Kirby, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500. Counsel for Defendant: Darryl Lee James, Jr., Donna Lee Elm, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700; James Sun Park, Park Law Office PLC, 111 West Monroe Street, Ste. 716, Phoenix, Arizona 85003, 602-462-5700.

6. United States v. Sinclair, No. 01-0486-PHX-MHM (D. Ariz., May 5, 2005)

The defendant was a member of a Jamaican marijuana trafficking organization. In June 2003, the defendant took part in a triple homicide, where members of his drug trafficking organization murdered three Mexican nationals during a drug transaction "rip-off" in an apartment in Tempe, Arizona. The defendant was charged with conspiracy to commit money laundering, conspiracy to possess with intent to distribute marijuana, and possession or use of a firearm during and in relation to a drug trafficking offense resulting in death. The government initially indicated that it would seek the death penalty, but shortly before trial withdrew its request. The jury convicted the defendant on all counts, and I sentenced him to the maximum allowable term of life imprisonment. The defendant appealed his conviction, arguing that he was incapable of voluntarily, knowingly and intelligently waiving his Miranda rights, that the government engaged in prosecutorial misconduct when it elicited false testimony from a witness, that the sentence was unreasonable, and that I had engaged in improper judicial fact-finding. In a unanimous memorandum opinion, the Court of Appeals affirmed the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00033 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.015

defendant's conviction and sentence. United States v. Sinclair, 283 Fed.Appx. 582 (9th Cir. 2008).

Counsel for Plaintiff: Kevin M. Rapp, Keith Vercauteren, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona, 85004, 602-514-7500. Counsel for Defendant: Daniel D. Maynard, Maynard Cronin Erickson Curran & Sparks PLC, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012, 602-279-8500.

7. Athletic Alternatives, Inc., v. Benetton Trading USA, Inc. No. CV-98-01953-PHX-MHM (D. Ariz., Mar. 31, 2005)

The plaintiff brought suit alleging multiple counts of patent infringement and one claim for breach of contract. The case concerned the plaintiff's patent for a tennis racquet utilizing a specialized method to anchor strings to the racquet frame. At summary judgment, I dismissed a number of claims of the patent, finding they were obvious. I also ruled that the applicable statute of limitations barred the plaintiff's breach of contract claim. After a bench trial, I invalidated other claims of the patent for indefiniteness. The plaintiff appealed to the Court of Appeals for the Federal Circuit, which affirmed my findings concerning obviousness and breach of contract. The Federal Circuit, however, reversed the indefiniteness ruling, deciding that the patents' claims were sufficiently precise and, therefore, valid. 174 Fed. Appx. 571 (Fed. Cir. 2006). Following the Supreme Court's denial of plaintiff's certiorari request, 549 U.S. 887 (2006), the parties informed me that no further proceedings were necessary, and I directed that the case be closed.

Counsel for Plaintiff: Daniel D. Maynard, Maynard Cronin Erickson Curran & Sparks PLC, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443, 602-279-8500; Douglas Cameron Erickson, Maynard Cronin Erickson Curran & Sparks, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443. Counsel for Defendant: Mark I. Harrison, Osborn Maledon PA, PO Box 36379, Phoenix, Arizona 85067-6379, 602-640-9000; Robert B. Smith, Skadden Arps Slate Meagher & Flom LLP, 4 Times Square, New York, New York 10036.

8. United States v. Poseley, No. CR-03-00344-MHM (D. Ariz.. July, 11 2006)

This case involved multiple defendants in a conspiracy to defraud the United States through the use of bogus trusts and was designated a complex case due to the nature of the case, extensive discovery issues, and the numerous defendants charged. Several individuals were charged for founding and being associated with a company that sold sham entities called "Pure Trust Organizations" to purportedly help its customers avoid taxes. These individuals also were charged with 26 counts of failing to file income tax returns. Prior to trial, it was discovered that out-of-state co-counsel for one of the defendants was involved in

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00034 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.016

disciplinary proceedings in Arkansas. I therefore terminated his representation and required the defendant to proceed with in-state co-counsel. The defendant later appealed, arguing that I had violated her right to counsel. The Ninth Circuit affirmed my decision in United States v. Ensign, 491 F.3d 1109 (9th Cir. 2007). The case proceeded; after a 32-day jury trial against the remaining defendants, two were found guilty of the conspiracy charge and failure to file tax returns. I sentenced one defendant to 84 months, to be followed by three years of supervised release, and a $175,000 fine. I sentenced a second defendant to 60 months, to be followed by three years of supervised release. Several other defendants were found guilty of a number of counts of failure to file tax returns and I imposed lesser sentences. The Court of Appeals affirmed these convictions in United States v. Poseley, 267 Fed. Appx. 613 (9th Cir. 2008).

Counsel for Plaintiff: Larry J. Wszalek, United States Department of Justice, Tax Division Criminal Enforcement, PO Box 972, Ben Franklin Station, Washington, DC 20044, 202-616-3866; Mark T. Odulio, United States Attorney's Office, Tax Division Criminal Enforcement, PO Box 972, Ben Franklin Station, Washington, DC 20044, 202-514-8032. Counsel for Defendants: Stephen Christopher Kunkle, Law Office of Stephen C Kunkle, 7227 North 16th Street, Ste. 224, Phoenix, Arizona 85020, 602-266-6900; Douglas Cameron Erickson, Maynard Cronin Erickson Curran & Sparks, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443, 602-279-8500.

9. United States v. Butts, No. CR-05-1127-PHX-MHM, 2007 WL 2081182 (D. Ariz. July 19, 2007)

The defendant was convicted of multiple counts of possession of child pornography and one count of distribution of child pornography based on his sharing of a movie containing child pornography on Limewire software. After trial, I sentenced the defendant to 220 months for distribution of child pornography and 120 months for multiple counts of possession of child pornography, to be served concurrently. This case involved numerous exhibits, special discovery procedures, and the defendant's choice to represent himself during a portion of trial. The defendant appealed, challenging the misdating of the warrant used to search his property. The Ninth Circuit affirmed, holding that the misdating was inadvertent rather than intentional, in United States v. Butts, 2009 WL 4884356 (9th Cir. 2009).

Counsel for Plaintiff: Sharon K. Sexton, United States Attorney's Office, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500; James Anthony Silver, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500. Counsel for Defendant: Philip Edward Hantel, Attorney at Law, 710 West Roosevelt Street, Phoenix, Arizona 85004, 602-252-1099; Mark A. Paige Paige Law Firm, 111 West Monroe Street, Ste. 1212, Phoenix, Arizona 85003, 602-254-5457.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00035 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.017

10. Ctr. for Biological Diversity v. Kempthorne, No. CV 07-0038-PHX-MHM, 2008 WL 659822 (D. Ariz., March 6, 2008)

The plaintiffs challenged the defendants' denial of the plaintiffs' petition to define the desert bald eagle population of the Sonoran Desert region of the American Southwest as a distinct population segment and to list the desert bald eagle as "endangered" pursuant to the Endangered Species Act. I held that the defendants' final delisting rule did not moot the plaintiffs' challenge, and the defendants acted arbitrarily and capriciously in evaluating the plaintiffs' petition. I ordered that the defendants issue a 12-month report concerning whether listing the desert eagle population as a distinct population segment is warranted, and, if so, whether listing the desert bald eagle as threatened or endangered under the Endangered Species Act is warranted. I further enjoined the defendants from removing the desert bald eagle from the threatened species list pending the outcome of the 12-month finding.

Counsel for Plaintiffs: Daniel John Rohlf, Pacific Environmental Advocacy Center, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, 503-768-6707; Howard M. Shanker, The Shanker Law Firm PLC, 700 East Baseline Road, Bldg. B, Tempe, Arizona 85283, 480-838-9460. Counsel for Defendants: Lisa Lynne Russell, United States Department of Justice, PO Box 7369, Ben Franklin Station, Washington, DC 20044-7369, 202-305-0388; Hao-Chin Yang, United States Department of Justice, PO Box 7369, Washington, DC 20044-7369 202-305-0209.

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

1. Northern Queen, Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002). Counsel for Appellant: Michael A. Barcott, Weddle & Barcott, 999 3rd Avenue, Suite 2600, Seattle, Washington 98104, (206) 292-8008; Nina M. Mitchell, Weddle & Barcott, 999 3rd Avenue, Suite 2600, Seattle, Washington 98104, (206) 292-8008. Counsel for Appellee: Donald P. Marinkovich, LeGros Buchanan & Paul, 701 Fifth Avenue, Suite 2500, Seattle, Washington 98104, (206) 623-4990.

2. Ctr. for Biological Diversity v. Kempthorne, 2008 WL 659822 (D. Ariz. Mar. 6, 2008). Counsel for Plaintiffs: Daniel John Rohlf, Pacific Environmental Advocacy Center, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, 503-768-6707; Howard M. Shanker, The Shanker Law Firm PLC, 700 East Baseline Road, Bldg. B, Tempe, Arizona 85283, 480-838-9460. Counsel for Defendants: Lisa Lynne Russell, United States Department of Justice, PO Box 7369, Ben Franklin Station, Washington, DC 20044-7369, 202-305-0388; Hao-Chin Yang, United States Department of Justice, PO Box 7369, Washington, DC 20044-7369 202-305-0209.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00036 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.018

3. Black Star Farms, LLC v. Oliver, 544 F. Supp. 2d 913 (D. Ariz. 2008), aff'd, 2008 U.S. Dist. LEXIS 15242 (9th Cir. Apr. 10, 2008). Counsel for Plaintiffs: James A. Tanford, Indiana University School of Law, 211South Indiana Avenue, Bloomington, Indiana 47405, 812-855-4846; Kent McGregor Nicholas, Kent M. Nicholas Attorney at Law, 40 North Center Street, Ste. 202, Mesa, Arizona 85201-7300, 480-461-4690. Counsel for Defendants: Christopher Arthur Munns, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-7997; Keely Lynn Verstegen, Office of the Attorney General, Gibraltar Bldg., 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-7982.

4. Ortega Melendres v. Arpaio, No. CV-07-2513, 2009 WL 2132693 (D. Ariz. July 15, 2009). Counsel for Plaintiffs: David J. Bodney, Steptoe & Johnson LLP, 201 East Washington Street, Ste. 1600, Phoenix, Arizona 85004, 602-257-5200, Nancy Anne Ramirez, MALDEF, 634 South Spring Street, 11th Floor, Los Angeles, California 90014, 213-629-2512. Counsel for Defendants: Drew Metcalf, Schmitt Schneck Smyth & Herrod PC, 1221 East Osborn Road. Ste. 105, Phoenix, Arizona 85014-5540, 602-277-7000, Charitie L. Hartsig, Ryley Carlock & Applewhite PA, 1 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4417, 602-440-4898.

5. J.K. v. Ariz. Bd. of Regents, 2008 WL 4446712 (D. Ariz. September 30, 2008). Counsel for Plaintiff: Ariela Migdal, ACLU, 125 Broad Street,18th Floor, New York, New York 10004, 212-519-7861; Baine P Kerr, Hutchinson Black & Cook LLC, 921 Walnut Street, Ste. 200, Boulder, Colorado, 80302, 303-442-6514. Counsel for Defendants: Michael King Goodwin, Office of the Attorney General, Liability Management Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-7674; William August Richards, Office of the Attorney General, Liability Management Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8355

6. Patel v. Verde Valley Med. Ctr., No. CV-05-01129-PHX-MHM (D. Ariz. Mar. 31, 2009). Counsel for Plaintiff: Brian J. Foster, Dan W. Goldfine, Michelle Leigh Keogh, Snell & Wilmer LLP, 1 Arizona Center, 400 East Van Buren, Phoenix, Arizona 85004-0001, 602-382-6000. Counsel for Defendant: Calvin L. Raup, Raup & Hergenroether PLLC, 1 Renaissance Square, 2 North Central Avenue, Ste. 1100, Phoenix, Arizona 85004, 602-229-8989; David A. Ettinger, Honigman Miller Schwartz & Cohn LLP, 2290 1st National Bldg., 660 Woodward Avenue, Detroit, Michigan 48226, 313-465-7368. Special Master: Roxane C. Busey, Baker & McKenzie LLP, 130 East Randolph Drive, Ste. 3500, Chicago, Illinois 60601, 312-861-8281.

7. Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., 573 F. Supp. 2d 1170 (D. Ariz. 2008). Counsel for Plaintiffs: Steven C. Cherny, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, 212-446-4800. Maximilian A. Grant, Latham & Watkins, LLP, 555 11th Street NW, Ste. 1000,

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00037 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.019

Washington, DC 20004, 202-637-2200. Counsel for Defendants, Brett L. Dunkelman, Osborn Maledon PA, 2929 North Central Avenue, Ste. 2100, Phoenix, Arizona 85012, 602-640-9000; James W. Gould, David H. Pfeffer, Locke Lord Bissell & Liddell LLP, 3 World Financial Center, New York, New York 10281, 212-415-8600. Special Master: James M. Amend, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, 312-861-2133.

8. Stanley v. Schriro, CV-98-430-PHX-MHM (D. Ariz. Sept. 27, 2006) (Document #67). Counsel for Petitioner: Gilbert Henry Levy, Law Office of Gilbert H. Levy, Market Place Two, 2001 Western Avenue, Ste. 200, Seattle, Washington 98121, 206-443-0670; Sylvia Jeanne Lett, Federal Public Defender's Office, 407 West Congress Street, Ste. 501, Tucson, Arizona 85701-1310, 520-879-7500; Jim D. Nielsen, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8591; Gregory A. McCarthy, Office of the Attorney General, Capital Litigation Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-4686.

9. Van Adams v. Schriro, No. CV-04-01359-PHX-MHM, 2007 WL 973959 (D. Ariz. Mar. 30, 2007); Van Adams v. Schriro, 2007 U.S. Dist. LEXIS 63747 (D. Ariz. Aug. 27, 2007). Counsel for Petitioner: Amy Beth Krauss, Amy B Krauss Esq., PO Box 65126, Tucson, Arizona 85718, 520-400-6170; Sean Christopher Chapman, Law Offices of Sean C Chapman PC, 100 North Stone Avenue, Ste. 701, Tucson, Arizona 85701. Counsel for Respondents: Kent E. Cattani, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8589; Patricia Ann Nigro, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-4686.

10. W. Watersheds Project v. Bureau of Land Mgmt., 629 F. Supp.2d 951 (D. Ariz. 2009). Counsel for Plaintiff: Erik Bowers Ryberg, Attorney at Law, 312 South Convent Avenue, Tucson, Arizona 85701, 520-622-3333; Lauren M Rule, Advocates for the West, PO Box 1612, Boise, Idaho 83701, 208-342-7024. Counsel for Defendant: Donna S. Fitzgerald, US Department of Justice, 601 D Street NW, Room 3104, Washington, DC 20004, 202-305-0476; Richard Glenn Patrick, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500.

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

D'Angelo v. Schriro, No. CV-04-1006-PHX-MHM, 2007 WL 2892959 (D. Ariz. Sept. 28, 2007), aff'd, 338 Fed. Appx. 583 (9th Cir. 2009), cert. denied sub nom. D'Angelo v. Ryan, 130 S. Ct. 627 (2009).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00038 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.020

Stewart v. Bond, No. CV-07-0344-PHX-MHM, 2007 WL 1467177 (D. Ariz. May 17, 2007), appeal denied, No. CV-07-16003-PHX, cert. denied, 128 S. Ct. 2905 (2008).

Smalling v. Stearnes, No. CV-05-2043-PHX-MHM, 2007 WL 779616 (D. Ariz. Jan. 19, 2007), appeal denied, No. CV-07-15580-PHX-SMM, cert. denied, 552 U.S. 1281 (2008).

Elliott v. White Mountain Apache Tribal Court, No. CV-05-4240-PHX-MHM, 2006 WL 3533147 (D. Ariz. Dec. 6, 2006), aff'd, 566 F.3d 842 (9th Cir. 2009), cert. denied, 130 S. Ct. 624 (2009).

United States v. George, No. CR-05-0709-PHX-MHM, 2010 WL 682536 (D. Ariz. February 25, 2010), aff'd, 291 Fed. Appx. 803 (9th Cir. 2008), cert. denied, 129 S. Ct. 659 (2008).

United States v. James, No. CR-03-0900-PHX-MHM, 2006 WL 2456224 (D. Ariz. Aug. 21, 2006), aff'd, 556 F.3d 1062 (9th Cir. 2009), cert. dismissed sub nom. James v. United States, 130 S. Ct. 46 (2009).

Nash v. Schriro, No. CV-97-1104-PHX-MHM, 2006 WL 1889589 (D. Ariz. Jul 07, 2006), reconsideration denied, 2006 WL 2821666 (D. Ariz. Sep 30, 2006), appeal denied, 2006 WL 3218662 (D. Ariz. Nov 02, 2006), remanded sub nom. Nash v. Ryan, 581 F.3d 1048 (9th Cir. 2009), cert. denied, 78 U.S.L.W. 3368.

McManus v. Gibson, No. CV-01-1225-PHX-MHM, appeal denied, No. CV 06-15797-PHX, cert. denied sub nom. McManus v. Svedin, 549 U.S. 1352 (2007).

McManus v. Ridgley, No. CV-04-2813-PHX-MHM, appeal denied, No. CV 06-15765-PHX, cert. denied, 549 U.S. 1136 (2007).

United States v. Poseley, No. CR-03-0344-PHX-MHM, 2008 WL 4811174 (D. Ariz. Nov. 5, 2008), aff'd, 267 Fed. Appx. 613 (9th Cir. 2008), cert. denied sub nom. Poseley v. United States, 129 S. Ct. 92 (2008).

United States v. Ortiz, No. CR-04-1303-PHX-MHM, aff'd, 225 Fed. Appx. 638 (9th Cir. 2007), cert. denied sub nom. Ortiz v. United States, 552 U.S. 926, (2007).

Acuna v. Mel Clayton Ford, No. CV-04-2368-PHX-MHM, aff'd, 171 Fed. Appx. 551 (9th Cir. 2006), cert. denied, 549 U.S. 838 (2006), rehearing denied, 549 U.S. 1048 (2006).

Kroncke v. Hood, No. CV-01-1466-PHX-MHM, appeal denied, No. CV-05-16038-PHX, cert. dismissed, 549 U.S. 974 (2006), reconsideration denied by, 549 U.S. 1076 (2006).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00039 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.021

Kroncke v. Arizona, No. CV-03-2481-PHX-MHM, appeal denied, 171 Fed. Appx. 544 (9th Cir. 2006), cert. denied, 549 U.S. 802 (2006).

Klepper v. City of Page, No. CV-03-0847-PHX-MHM, aff'd, 206 Fed. Appx. 692 (9th Cir. 2006), cert. denied, 552 U.S. 814 (2007).

Kucernak v. Sinfield, No. CV-03-1175-PHX-MHM, aff'd, 137 Fed. Appx. 59 (9th Cir. 2005), cert. denied, 546 U.S. 1040 (2005).

Athletic Alternatives, Inc. v. Benetton Trading USA, Inc., No. CV-98-01953-PHX-MHM (D. Ariz. March 31, 2005), rev'd, 174 Fed. Appx. 571 (Fed. Cir. March 31, 2006), cert. denied, 549 U.S. 887 (2006).

Schroeder v. Stewart, No. CV-02-1701-PHX-MHM, appeal denied, No. CV-04-15406-PHX-MHM, cert. notice received, Aug. 31, 2004.

United States v. Mitchell, No. CR-01-1062-PHX-MHM, aff'd, 502 F.3d 931 (9th Cir. 2007), amended by, 2007 U.S. App. LEXIS 23632 (9th Cir. 2007), cert. denied, 128 S. Ct. 2902 (2008).

Barton v. Ruechel, No. CV-01-1221-PHX-MHM, appeal dismissed, No. CV-03-17233-PHX, cert. denied, 543 U.S. 886 (2004).

E.E.O.C. v. Peabody W. Coal Co., No. CV-01-1050-PHX-MHM, 214 F.R.D. 549 (D. Ariz. Sept. 26, 2002), rev'd and remanded, 400 F.3d 774 (9th Cir. 2005), cert. denied sub nom. Peabody Western Coal Co. v. E.E.O.C., 546 U.S. 1150 (2006), remanded, 2006 WL 2816603, 99 Fair Empl.Prac.Cas. (BNA) 40, 88 Empl. Prac. Dec. P 42,537 (D. Ariz. Sep 30, 2006).

Kroncke v. Saldate, No. CV-02-0136-PHX-MHM, appeal denied, No. CV-02-17176-PHX-MHM, cert. denied, 539 U.S. 962 (2003), reh'g denied, 539 U.S. 983 (2003).

In re Krystal Energy Co., No. CV-01-1970-PHX-MHM, 2001 WL 34395864 (Bankr. D. Ariz. Oct 22, 2001), aff'd, In re Krystal Energy Co., 308 B.R. 48 (D. Ariz. Sep 30, 2002), rev'd sub nom. Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004), cert. denied sub nom. Navajo Nation v. Krystal Energy Co., 543 U.S. 871 (2004), Krystal Energy Co. v. Navajo Nation, 2008 WL 2477084 (D. Ariz. June 18, 2008), subsequent determination sub nom, In re Krystal Energy Co., 2008 WL 4446703 (D. Ariz. Sep 30, 2008).

United States v. Rossi, No. CR-01-1110-PHX-MHM, aff'd sub. nom. United States v. Price, 84 Fed. Appx. 917 (9th Cir. 2003), cert. denied, 542 U.S. 913 (2004).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00040 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.022

Stotts v. Luna, CV-01-1040-PHX-MHM, appeal dismissed, 46 Fed. Appx. 523 (9th Cir. (2002), cert. denied, 537 U.S. 1126 (2003).

Huth v. Hartford Ins. Co. M.W., No. CV-00-2345-PHX-MHM, aff'd, 298 F.3d 800 (9th Cir. 2002), cert. denied sub. nom. Hartford Ins. Co. M.W. v. Huth, 537 U.S. 1233 (2003).

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

Okai v. Ashcroft, No. CV-01-0679-PHX-MHM (D. Ariz. Mar. 12, 2002), rev'd, No. 02-15894 (9th Cir. Aug. 15, 2003). I adopted in full the Magistrate Judge's Report and Recommendation. The Appeals Court reversed and remanded for further proceedings consistent with Demore v. Kim, 538 U.S. 510 (2003).

Pugliese v. Arizona Department of Health and Human Servs., 147 F. Supp. 2d 985 (D. Ariz. 2001), rev'd, Pugliese v. Dillenberg, 346 F.3d 937 (9th Cir. 2003). I held that Arizona's Eleventh Amendment immunity was not abrogated nor waived in a case involving alleged violations of the Rehabilitation Act. The Court of Appeals held that Arizona validly waived its sovereign immunity under the Eleventh Amendment.

Prieto v. Paul Revere Life Ins. Co., No. CV-98-01484-MHM (D. Ariz. Aug. 13, 2001), rev'd, 354 F.3d 1005 (9th Cir. 2004). I found that plaintiff had waived his entitlement to benefits for the period of August 1996-97 by failing to apply for benefits in accordance with the applicable policy provisions. The Court of Appeals held that waiver was not properly pled and that no waiver occurred.

Isley v. Arizona Dep't of Corrs., No. CV-01-01567-MHM (D. Ariz. Mar. 31, 2003), rev'd, 383 F.3d 1054 (9th Cir. 2004). I dismissed plaintiff's petition for writ of habeas corpus as untimely under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). The Court of Appeals held that the state petition was "pending" and tolled the AEDPA limitations period once Isley filed notice of post-conviction relief under state procedures.

Ferreira v. Ashcroft, No. CV-01-1903-MHM (D. Ariz. Sept. 25, 2002), rev'd, 382 F.3d 1045 (9th Cir. 2004). I found that the petitioner's conviction constituted an aggravated felony because it was a controlled substance offense punishable by more than one year's imprisonment under state law. The Court of Appeals ruled that the conviction was not an aggravated felony because it would not be punishable as a felony under federal drug laws and did not contain a trafficking element.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00041 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.023

In re Krystal Energy Co., 308 B.R. 48 (D. Ariz. 2002), rev'd, Krystal Energy v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004). I found that the Bankruptcy Code provision that purported to abrogate sovereign immunity of governmental units did not explicitly waive sovereign immunity of Navajo Nation. Therefore, I found that Navajo Nation could not be named as a defendant in turnover proceeding absent waiver of its immunity. The Court of Appeals held that Congress did abrogate the sovereign immunity of Indian tribes under 11 U.S.C. §§ 106(a) and 101(27).

Schwartz v. Metro. Life Ins. Co., No. CV-01-2075-PHX-MHM (D. Ariz. Sep. 03, 2003), rev'd, 127 Fed. Appx. 279 (9th Cir. 2005). I ruled in favor of the defendant, applying an abuse of discretion standard and deciding that the defendant did not improperly deny the plaintiff long term disability benefits. The Court of Appeals reversed, holding that the decision to deny the plaintiff benefits should have been reviewed de novo.

E.E.O.C. v. Peabody W. Coal Co., 214 F.R.D. 549 (D. Ariz. 2002), rev'd, 400 F.3d 774 (9th Cir. 2005). I granted summary judgment in favor of Peabody Western, holding that (1) it was not feasible to join the Navajo Nation based on sovereign immunity, (2) the Nation was necessary and indispensable party, and (3) that the legality of the Navajo employment preference in the lease was a nonjusticiable political question. The Court of Appeals held that it was feasible to join the tribe as a party and that the EEOC's claim did not present a nonjusticiable political question.

Athletic Alternatives, Inc., v. Benetton Trading USA, Inc., No. CV-98-01953-PHX-MHM (D. Ariz. Mar. 31, 2005), rev'd, 174 Fed. Appx. 571 (Fed. Cir. Mar. 31, 2006). I invalidated for indefiniteness claims 3-5 of Athletic Alternatives, Inc.'s ("AAI") '731 patent. The Federal Circuit reversed per curiam, holding claims 3-5 of AAI's '731 patent were sufficiently precise, and therefore valid.

Gerberry v. Maricopa County, No. CV-00-01342-MHM (D. Ariz. Sept. 18, 2003), rev'd, 172 Fed. Appx. 781 (9th Cir. 2006). I found that plaintiff was wrongfully terminated under the Arizona Employment Act. The Court of Appeals held that plaintiff's claim should have failed under this statute.

Taylor v. Stewart, No. CV-01-01708-MHM-MS (D. Ariz. Aug. 21, 2003), rev'd, 168 F. Appx. 218 (9th Cir. 2006). I dismissed a prisoner's 42 U.S.C. § 1983 action with prejudice as to certain claims that were barred under Edwards v. Balisok, 520 U.S. 641, 644-48 (1997). The Court of Appeals remanded the case for entry of judgment dismissing the same claims without prejudice.

United States v. Vargas-Ochoa, No. CR-05-00016-MHM (D. Ariz. Oct. 3, 2005), rev'd, 201 Fed. Appx. 571 (9th Cir. 2006). The Court of Appeals found that my imposition of a 16-level sentencing enhancement based on a pre-sentence report was error and it reversed and remanded for resentencing.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00042 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.024

Menken v. Emm, No. CV-04-00598-MHM (D. Ariz. June 29, 2005), rev'd, 503 F.3d 1050 (9th Cir. 2007). I dismissed this action, finding that the Court lacked personal jurisdiction over a judgment creditor. The Court of Appeals held that the exercise of personal jurisdiction over the judgment creditor was reasonable.

Diaz, v. Eagle Produce Ltd. P'ship, No. CV-03-02127-PHX-MHM (D. Ariz. Mar. 31, 2006), rev'd, 521 F.3d 1201 (9th Cir. 2008). I granted summary judgment to the defendant in a lawsuit alleging age discrimination. The Court of Appeals reversed regarding one plaintiff, finding that evidence of satisfactory job performance and other circumstantial evidence, taken together, could lead a reasonable juror to draw an inference of age discrimination.

Grabinski v. Nat'l Union Fire Ins. Co. of Pittsburgh, 2005 WL 2412784 (D. Ariz. Sept. 23, 2005), rev'd, 265 Fed. Appx. 633 (9th Cir. 2008). I dismissed Grabinski's complaint for failure to state a claim. The Court of Appeals held that Grabinski sufficiently alleged an abuse of process claim in his complaint.

Kim v. Ariz. Bd. of Regents, 2006 U.S. Dist. LEXIS 73456 (D. Ariz. Sept. 28, 2006), rev'd, 2008 U.S. App. LEXIS 20513 (9th Cir. Sept. 15, 2008). I granted summary judgment to the defendant in a lawsuit alleging race-based employment discrimination. The Court of Appeals reversed, finding there was a genuine issue of material fact concerning whether the defendant discriminated against the plaintiff based on his Asian ethnicity.

Thompson v. Paul, 402 F. Supp. 2d 1110 (D. Ariz. 2005), rev'd, 547 F.3d 1055 (9th Cir. 2008). I dismissed Thompson's complaint under Section 10(b) of the Securities Exchange Act of 1934 for failing to state a claim upon which relief could be granted. The Court of Appeals held that the complaint stated a claim upon which relief could be granted under Section 10(b).

Hubble v. Soc. Sec. Admin., No. CV-05-1583-PHX-MHM (D. Ariz. Sept. 29, 2006), rev'd, 290 Fed. Appx. 56 (9th Cir. 2008). I remanded Hubble's claim for disability insurance benefits for further administrative proceedings. The Court of Appeals held that the claim should have been remanded for a calculation and payment of benefits.

Slone v. Schriro, No. CV-05-3362-PHX-MHM, 2006 WL 3806708 (D. Ariz. Dec. 27, 2006), rev'd, 291 Fed Appx. 837 (9th Cir. 2008). The Court of Appeals vacated my dismissal of a habeas petition as untimely and instead directed dismissal of the petition on mootness grounds.

United States v. James, No. CR-03-0900-MHM-1 (D. Ariz. Mar. 1, 2007), rev'd, 556 F.3d 1062 (9th Cir. 2009). I presided over a trial in which the defendant was convicted of second degree murder, robbery, and felony murder, along with several other crimes. The Court of Appeals held that punishing the defendant for second degree murder, robbery, and their related gun crimes violated double

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00043 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.025

jeopardy given that the defendant had also been convicted and sentenced for felony murder and a related gun count for the same underlying act.

Siracusano v. Matrixx Initiatives, Inc., 2005 U.S. Dist. LEXIS 41102 (D. Ariz. Dec. 15, 2005), rev'd, 585 F.3d 1167 (9th Cir. 2009). I dismissed the plaintiffs' claim brought under the Private Securities Litigation Reform Act of 1995 (PSLRA), concluding that the plaintiff failed to allege materiality. The Court of Appeals reversed, deciding that my reliance on the statistical significance standard was in error and that the plaintiffs' allegations were sufficient to meet the PSLRA's pleading requirement.

Stanley v. Schriro, No. CV-98-00430-PHX-MHM, 2006 WL 2816541 (D. Ariz. Sept. 27, 2006), rev'd, Stanley v. Schriro, ___ F.3d ___, 2010 WL 816940 (9th Cir. Mar. 11, 2010). I denied a 28 U.S.C. § 2254 habeas corpus petition challenging a conviction and capital life sentences for a double murder. The Court of Appeals affirmed the denial of the petition for a writ of habeas corpus for ineffective assistance of counsel during the guilt phase of trial and for Petitioner's Miranda claim. It reversed as to Petitioner's claim for ineffective assistance of counsel during the sentencing phase, holding that Petitioner was entitled to an evidentiary hearing on whether his lawyer rendered ineffective assistance of counsel during this phase.

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

As a general rule, I do not submit my orders for publication in the Federal Supplement. On occasion, however, orders that I have issued are designated for publication by the publishers of the Federal Supplement. Many are available online through Westlaw, Lexis, and other services. My unpublished orders are filed and stored with the Clerk of the Court.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Ortega Melendres v. Arpaio, 598 F. Supp. 2d 1025 (D. Ariz. 2009).

Black Star Farms, LLC v. Oliver, 544 F. Supp. 2d 913 (D. Ariz. 2008).

Elliott v. White Mountain Apache Tribal Court, No. CV 05-4240-PCT-MHM, 2006 WL 3533147 (D. Ariz. Dec. 06, 2006), aff'd, 566 F.3d 842 (9th Cir. 2009).

United States v. Fabela, 666 F. Supp. 2d 1082 (D. Ariz. 2009).

Marlyn Nutraceuticals, Inc. v. Improvita Health Prod., 663 F. Supp. 2d 841 (D. Ariz. 2009).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00044 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.026

Bard Peripheral Vascular, Inc. v. W.L. Gore & Assoc., Inc., No. CV-03-0597-PHX-MHM, 2009 WL 886514 (D. Ariz. Mar. 31, 2009).

Wroclawski v. United States, 634 F. Supp. 2d 1003 (D. Ariz. 2009).

United States v. Kasey, No. CR. 06-775-PHX-MHM, 2007 WL 505291 (D. Ariz. Feb. 14, 2007).

ASU Students For Life v. Crow, No. CV 06-1824-PHX-MHM, 2008 WL 686946, (D. Ariz. Mar. 10, 2008), aff'd in part, vacated in part, WL 4841124 (9th Cir. Dec. 11, 2009).

J.K. v. Ariz. Bd. of Regents, No. CV-06-916-PHX-MHM, 2008 WL 4446712 (D. Ariz. Sept. 30, 2008)

Stanley v. Schriro, CV-98-430-PHX-MHM (D. Ariz. Sept. 27, 2006) (Document #67), rev'd, ___ F.3d ___, 2010 WL 816940 (9th Cir. Mar. 11, 2010)

Van Adams v. Schriro, No. CV-04-01359-PHX-MHM (D. Ariz. Mar. 30, 2007) (Document #116).

Van Adams v. Schriro, No. CV 04-1359-PHX-MHM, 2007 U.S. Dist. LEXIS 63747 (D. Ariz. Aug. 27, 2007)

Nash v. Schriro, No. CV-97-1104-PHX-MHM, 2006 WL 1889589 (D. Ariz. July 7, 2006), remanded, 581 F.3d 1048 (9th Cir. 2009).

United States v. Shootinglady, No. CR-05-0399-PCT-MHM, 2006 WL 398618 (D. Ariz. Feb. 13, 2006).

United States v. Cruz-Guerra, No. CR-05-788-PHX-MHM, 2006 WL 381678 (D. Ariz. Feb. 17, 2006).

United States v. Mitchell, No. CR-01-01062-PHX-MHM, (D. Ariz. Mar. 11, 2003) (Document #220), aff'd, 502 F.3d 931 (9th Cir. 2007).

United States v. Mitchell, No. CR-01-01062-PHX-MHM, (D. Ariz. Mar. 5, 2003) (Document #233), aff'd, 502 F.3d 931 (9th Cir. 2007).

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00045 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.027

Panel: Judge Betty Fletcher, Judge Ronald Gould, Judge Mary Murguia

CID Enters., Inc, et al. v. Wallowa Forest, 40 Fed. Appx. 601 (9th Cir. 2002).

CID Enters., Inc, et al. v. Wallowa Forest, 40 Fed. Appx. 601 (9th Cir. 2002).

Goodman v. United States, 298 F.3d 1048 (9th Cir. 2002).

Esplanade Props. v. City of Seattle, 307 F.3d 978 (9th Cir. 2002).

Zuniga-Banuelos, v. INS, 44 Fed. Appx. 113 (9th Cir. 2002).

Quintanilla v. INS, No. 99-70328 (dismissed for lack of jurisdiction; not reported in Westlaw).

Velazquez-Castillo v. INS, 40 Fed. Appx. 585 (9th Cir. 2002).

Turner Sand & Gravel, et al. v. JGC Enters., et al., 40 Fed. Appx. 561 (9th Cir. June 24, 2002).

Commercial Elec. v. JGC Enters, 40 Fed. Appx. 561 (9th Cir. 2002).

Northern Queen Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002).

Schumacher v. Gen. Sec., 41 Fed. Appx. 49 (9th Cir. 2002).

Kinnear v. Sea Pac Ins., 41 Fed. Appx. 141 (9th Cir. 2002).

King County v. Rasmussen, 299 F.3d 1077 (9th Cir. 2002).

Manjiyani, et al. v. Gonzales, 343 F.3d 1018 (9th Cir. 2003).

Panel: Judge Stephen Trott, Judge Johnnie Rawlinson, Judge Mary Murguia

Hen v. City of Los Angeles, 244 Fed. Appx. 794 (9th Cir. July 27, 2007).

Stein v. Braum Inv., 244 Fed. Appx. 816 (9th Cir. 2007).

Shane v. Albertson's Inc., 504 F.3d 1166 (9th Cir. 2007).

Trotter v. Baca, 247 Fed. Appx. 878 (9th Cir. 2007).

Chang v. Liberty Life Assurance. Co. of Boston, 247 Fed. Appx. 875 (9th Cir. 2007).

Ramirez, et al. v. Century 21, 235 Fed. Appx. 489 (9th Cir. 2007).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00046 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.028

I authored the following opinions:

Northern Queen, Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002). This was a maritime case about a crab fishing boat that capsized in the Bering Sea due to an excessive build up of ice and an accumulation of sea water in the lazarette, killing all those on board. Following the accident, the Northern Queen brought suit against the estate of the ship's captain to limit its liability pursuant to the Limitation of Liability Act, 46 U.S.C. §§ 181 et seq. I authored the majority opinion, which affirmed the district court's ruling that the estate of the ship's captain could not recover damages from the ship's owner because of the primary duty rule.

Manjiyani v. Ashcroft, 343 F.3d 1018 (9th Cir. 2003). In this immigration case, we granted Petitioner's request to supplement the record on appeal and concluded that her evidence was sufficient to reopen proceedings before the Board of Immigration Appeals to consider her evidence, and to determine, in the first instance, whether to grant her petition to reopen her underlying deportation proceedings in light of the complete record.

Shane v. Albertson's Inc., 504 F.3d 1166 (9th Cir. 2007). In this ERISA case, the panel held (1) that the version of plan in effect at commencement of participant's total disability controlled, and (2) under the de novo standard of review (given an unauthorized delegation of discretionary fiduciary authority) the denial of benefits was proper.

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

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00047 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.029

We do not have an "automatic" recusal system at the District Court. I maintain a standing recusal list of individuals and entities consistent with the Code of Conduct for United States Judges. I review the parties and counsel in each case to ensure I do not have a close friendship or business association with any of them. I have a few attorney friends, who are either current or former Assistant United States Attorneys. If any of them were to represent a party in a case to which I was assigned, I would recuse.

There have been a few cases in which my recusal was requested by a *pro se* litigant who was dissatisfied with the decision I rendered in his/her case.

There are two cases in which I was requested to recuse myself by a party who was not *pro se*:

Ortega Melendres v. Arpaio, No. CV-07-2513-PHX-MHM (D. Ariz.)

This was a class action lawsuit brought against Maricopa County, the Maricopa County Sheriff's Office ("MCSO") and Sheriff Joseph M. Arpaio pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act, and Article II, § 8 of the Arizona Constitution alleging racial profiling and unlawful detention of persons of Hispanic appearance and/or descent during the defendants' attempt to enforce federal immigration laws. After I denied the defendants' renewed motion to dismiss, the defendants moved to recuse me from the case under both 28 U.S.C. § 144 and 28 U.S.C. § 455(a)-(b). I rejected as groundless the defendants' arguments that I was personally biased against them under § 455(b)(1) and that I had an improper "interest" in the litigation under § 445(b)(4) and (b)(5)(iii) based on the position of my identical twin sister, Janet Murguia, as CEO and President of the National Council of La Raza ("NCLR"). However, under § 455(a), I recognized that NCLR had published internet-based articles that were highly disparaging of specific defendants in the case, and that the articles took strong stands on disputed factual matters lying at the heart of the litigation. Accordingly, I concluded in an abundance of caution and to avoid even the slightest doubt in public perception of fair adjudication of this case, I should recuse myself from this case.

Okonkwo v. Glendale Union High School Dist., No. CV-08-0633-PHX-MHM (D. Ariz.)

This civil case was filed by a *pro se* plaintiff against his former employer alleging discrimination on the basis of age and race. At the conclusion of fact discovery, the plaintiff retained private counsel. Thereafter, the plaintiff's counsel requested an extension of time to engage in additional fact discovery. The plaintiff's counsel also filed a motion for a protective order to prevent the plaintiff's deposition. After these issues were not resolved to the plaintiff's satisfaction, the plaintiff moved to recuse me under 28 U.S.C. § 144 and 28 U.S.C. § 455. I denied the motion for recusal. Plaintiff then filed a related civil rights lawsuit that named me

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00048 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.030

as a defendant. See Okonkwo v. Murguia, CV-09-2604-PHX-JWS (D. Ariz.). All claims against me were dismissed with prejudice, and the district court issued an order to show cause why the plaintiff's counsel should not face sanctions under Rule 11 of the Federal Rules of Civil Procedure.

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

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

I have not held public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held any memberships or offices in, or rendered any services to, any political party or election committee, nor have I held a position or played a role in a political campaign.

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

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

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

I did not serve as a law clerk to a judge.

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

I did not practice alone.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00049 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.031

1985 – 1990
Wyandotte County District Attorney's Office
710 North 7th Street
Kansas City, Kansas 66101
Assistant District Attorney

1990 – 2000
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
Deputy Chief, Criminal Section (1994 – 1998)
Assistant United States Attorney (1990 – 2000)

1999 – 2000
Executive Office for United States Attorneys
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Director (1999 – 2000)
Principal Deputy Director (1999)
Counsel to Director's Staff (1998 – 1999)

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

I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1985 to 1990, I was an Assistant District Attorney for Wyandotte County, Kansas. I was responsible for all aspects of felony criminal prosecution with emphasis on sex crimes and child abuse. I was a senior trial attorney in the Sex Crimes Unit for two and one-half years. I was also a trial attorney in the Major Crimes Division for two years. My duties included evaluating the sufficiency of evidence, secondary investigation, interviewing and preparing witnesses for court, jury trials and related courtroom appearances, preparing briefs and arguing appeals before the Kansas Supreme Court and the Kansas Court of Appeals, and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00050 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.032

daily interaction with the public regarding criminal issues. I tried more than 40 state felony jury trials to verdict.

From 1990 to 2000, I was an Assistant United States Attorney in the United States Attorney's Office, District of Arizona. From September 1990 to November 1994, I was an attorney in the Criminal Section, Violent Crime Unit. I was responsible for all aspects of federal felony criminal prosecutions and appeals, with an emphasis on violent crime. My duties included evaluating the sufficiency of evidence, presenting cases to the grand jury, directing secondary investigation, interviewing and preparing witnesses for court, jury trials, and related courtroom appearances, writing briefs, and arguing appeals before the Ninth Circuit. I tried approximately 20 federal felony jury trials to verdict.

From 1994 to 1998, I served as Deputy Chief of the Criminal Section. I was responsible for my own caseload, as well as training, directly supervising, and evaluating 10 Assistant United States Attorneys in the Violent Crime Unit. Additionally, I directly supervised seven attorneys in the Organized Crime Drug Enforcement Task Force - Major Drug Unit. I was responsible for consultation/staffing of major prosecutions, including areas such as Domestic Terrorism, Capital Murder, Civil Rights, Violence Against Women Act, Child Support Recovery Act, Gang and Juvenile matters. I served as chair of the Hiring Committee for the United States Attorney's Phoenix Office.

From August 1998 to September 1999, I was Counsel to the Director, and then Principal Deputy Director of the Executive Office for United States Attorneys (EOUSA), United States Department of Justice. I assisted the Director of the Executive Office for United States Attorneys in the overall operations of the 94 United States Attorneys' offices nationwide. I served as a liaison between all components in the Department of Justice and the field.

From September 1999 to November 2000, I was Director of the Executive Office for United States Attorneys. As Director, I supervised the EOUSA which provides oversight of and support to the 94 Offices of the United States Attorneys comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), and approximately 5,000 support staff employees. I served as the liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions, and other Department components. As Director, I supervised 22 staffs comprised of approximately 270 people and was responsible for the administration of an appropriation of more than 1 billion dollars.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00051 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.033

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

As a prosecutor, my former clients were the United States and the State of Kansas. My area of specialty was criminal prosecution.

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

As a state prosecutor, 100% of my practice involved litigation in state court. Likewise, as a federal prosecutor, 100% of my practice involved litigation in federal court. I appeared in court frequently.

i. Indicate the percentage of your practice in:

1. federal courts: 50%
2. state courts of record: 50%
3. other courts:
4. administrative agencies:

ii. Indicate the percentage of your practice in:

1. civil proceedings:
2. criminal proceedings: 100%

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

I estimate that I tried at least 60 cases to verdict since I started practicing as a lawyer. I estimate that I tried 40 cases to verdict in state court in Kansas. I estimate that I tried 20 cases to verdict in federal court in Arizona. In most instances, I was sole counsel. In addition, some cases resulted in guilty pleas after the trial commenced, but before verdict.

i. What percentage of these trials were:

1. jury: 98%
2. non-jury: 2%

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

I did not practice before the Supreme Court of the United States.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00052 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.034

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

    a. the date of representation;

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

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

1. United States v. Orlando Yazzie, No. CR-96-0255-PCT-EHC (D. Ariz).

I represented the United States in this prosecution under the federal homicide statute. The case was tried October 23 to October 31, 1996 before the Honorable Earl H. Carroll. The charges included first degree murder, aggravated assault, and violations of the federal firearm laws. I was lead counsel in the case and argued the case on behalf of the United States before the Ninth Circuit Court of Appeals.

In this case, the defendant went to the home of an individual with whom he had previously had an altercation. The defendant broke down the front door, shot several rounds of ammunition into the front living room, and then fled. The individual the defendant had targeted, however, was not in that house. Instead, there were five children sleeping in the front room. One child was killed and another suffered serious bodily injury. The defendant had been previously convicted of second degree murder and had been out of prison less than six months before committing this offense. His possession of a handgun was thus illegal under the federal "felon in possession" law. The trial involved the presentation of medical and scientific experts and child witnesses.

To avoid undue prejudice to the defendant by disclosure of his prior felony, the District Court ordered that the trial on the felon in possession charge be bifurcated from the murder and assault trial, but in a unique fashion: subsequently, the same jury considered the felon in possession case at the conclusion of the murder and assault trial. The defendant was found guilty of all charges and sentenced to a term of life imprisonment. The Ninth Circuit affirmed the conviction in February 1998. United States v. Yazzie, 139 F.3d 909 (9th Cir. 1998).

Co-counsel: Sharon K. Sexton, United States Attorney's Office, District of Arizona Two Renaissance Square, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, 602-514-7500. Counsel for defendant: Celia M. Rumann, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00053 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.035

2. United States v. Frederick Yazzie, No. CR-92-296-PCT-SMM (D. Ariz.)

I represented the United States in this federal prosecution of fourteen counts of sexual abuse of a minor. This case was tried May 4 to May 13, 1993, before the Honorable Stephen M. McNamee. I was lead counsel and briefed the matter before the Court of Appeals for the Ninth Circuit.

The defendant was charged with committing a variety of sexually abusive acts against his stepson over an extended period of time. An uncle of the victim, who was an eyewitness to some of the offenses, was mentally handicapped. The mother of the victim originally told law enforcement that she had seen some incidents of abuse, but recanted her statement prior to trial. Closed circuit television was used during trial when the child testified. The defendant was convicted of all counts and sentenced to 365 months' imprisonment.

During an emergency room visit, the victim's mother wrote a note to the physician concerning her son, and the trial court's admission of the mother's statement to the emergency room doctor presented an issue of first impression for the Ninth Circuit. The Ninth Circuit held that in limited circumstances, a statement from someone other than the patient to the doctor—in this case the parent of a child patient—may be introduced in court and admitted under the medical treatment exception to the hearsay rule. The Ninth Circuit Court of Appeals affirmed the conviction in December 1995. United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995).

Co-counsel: Bruce Taylor, National Law Center for Children and Families, 3819 Plaza Drive, Fairfax, Virginia 22030, 703-691-4626. Counsel for defendant at trial: Deborah Williams, Federal Public Defenders Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700. Counsel for defendant on appeal: Sandra L. Slaton, 4815 East Crystal Lane, Paradise Valley, Arizona 85253, 480-483-2178.

3. United States v. Bedonie, No. CR-94-033-PCT-PGR (D. Ariz.)

I represented the United States in this prosecution of a defendant who shot and killed two of his brothers-in-law. After an altercation with the victims, the defendant drove 32 miles to obtain a firearm, drove 32 miles back, and shot the victims at their home while 10 children were in the house. I was the sole counsel on the case and also argued the matter before the Court of Appeals for the Ninth Circuit.

On October 25, 1994, before the Honorable Paul G. Rosenblatt, the defendant pleaded guilty to two counts of second degree murder and one count of using a firearm in a crime of violence. The written plea agreement provided that the defendant receive a sentence of 20 to 25 years' imprisonment. Despite this agreement, and the recommendation in the presentence report for a sentence of between 19 and 22½ years, the court granted the defendant a two level reduction for acceptance of responsibility, rejected the plea agreement's provision for an upward departure, and sentenced the defendant to a term of

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00054 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.036

imprisonment of sixteen years and four months. The court denied the government's motion to withdraw the plea, and its motion for reconsideration of the sentence.

The government appealed. On appeal, we successfully argued that the court should have accepted the terms of the plea agreement or allowed the government to withdraw its agreement to the plea. The case was remanded to the district court, and the defendant was sentenced to twenty years in prison. United States v. Bedonie, 86 F.3d 1163 (9th Cir. 1996).

Counsel for defendant: John Sands, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

4. United States v. Sterkel, No. CR-97-209-PCT-RMS (D. Ariz.)

I was lead prosecutor in this federal interstate stalking case. The defendant, a former employee of the National Park Service, traveled from Utah to Arizona to stalk a former co-worker. The defendant traveled to Page, Arizona, in April 1997 and wrote several vulgar statements about his former co-worker on the door of the Glen Canyon National Recreational Area headquarters building. In May 1997, the defendant again wrote statements about the victim on the door to the headquarters and in several other locations. (The writings described the victim in sexually vulgar terms, urged sexual acts against the victim and also advocated destruction of the Glen Canyon dam.)

During the investigation, we were able to establish the defendant's identity and captured him on videotape leaving the writings. Although fearful of death or serious bodily injury, the victim did not sustain any physical injury. On August 22, 1997, the defendant pleaded guilty before the Honorable Roslyn Moore Silver and was sentenced to six months in a community-based facility, and a three-year term of supervised release. This was apparently the first interstate stalking case filed in the country.

Co-counsel: Hon. W. Scott Bales, (former Assistant U.S. Attorney), Justice, Arizona Supreme Court, 1501 West Washington Street, Room 427, Phoenix, Arizona 85007, 602-452-3534. Counsel for defendant: Bruce Griffen, Coconino County Legal Defender, 110 East Cherry Street, Flagstaff, Arizona 86001, 928-779-6816.

5. United States v. Gutberto Beltran-Gutierrez; United States v. Jose Beltran-Cardenas, No. CR-92-178-PHX-RO (D. Ariz.)

I was the sole prosecutor in this drug trafficking case involving black tar heroin. I also argued this case on behalf of the United States before the Court of Appeals for the Ninth Circuit.

The defendants sold black tar heroin to undercover DEA agents, and represented that they acquired the heroin from Mexico and regularly smuggled it into the United States. Both of the defendants spoke only Spanish. At the time of their arrests, the defendants reportedly had been selling as many as 15 ounces of heroin at a time, at a purchase price

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00055 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.037

of approximately $3,000 per ounce. The defendants had $25,000 worth of heroin in their possession at the time of the arrest, and had indicated to the undercover agents that they could provide the agents up to ten ounces every ten days. The defendants used an apartment in Phoenix, Arizona, to cook the heroin and conduct drug related business.

Several pretrial motions were filed by the defendants, including an unsuccessful motion to suppress the drug evidence. An evidentiary hearing was held on the suppression motion, at which one of the defendants, Beltran-Gutierrez (Gutierrez), testified.

On the day his case was set for trial, Beltran-Cardenas (Cardenas) pleaded guilty to all counts in the indictment, without any agreement with the government. Gutierrez' trial was held on December 2 to 7, 1992, before the Honorable Richard J. Owen (visiting judge from the Southern District of New York). Cardenas testified on behalf of his co-defendant, Gutierrez. In his testimony, Cardenas attempted to falsely exculpate Gutierrez. Gutierrez also testified at the trial, and made several inconsistent statements, including a statement inconsistent with his testimony at the suppression hearing. He was impeached with his prior sworn statement. The jury found Gutierrez guilty of all charges.

At the sentencing hearing, the judge found that Cardenas had an aggravated role in the offense, and that Cardenas had obstructed justice by committing perjury at his co-defendant's trial. Cardenas was sentenced to a term of 82 months' imprisonment. Gutierrez was sentenced to a term of 78 months' imprisonment. Cardenas appealed the length of his sentence, and Gutierrez appealed his conviction on the grounds that the use of his prior testimony violated his Fifth Amendment privilege against self-incrimination.

The Court of Appeals decided in the government's favor in all respects. The use of suppression hearing testimony for impeachment purposes at trial was apparently an issue of first impression for the Ninth Circuit. United States v. Beltran-Gutierrez, 19 F.3d 1287 (9th Cir. 1994); United States v. and Beltran-Cardenas, 19 F.3d 30 (9th Cir. 1994).

Counsel for defendant: Sandra Lynn Slaton, 4815 East Crystal Lane, Paradise Valley, Arizona 85253, 480-483-2178.

6. United States v. Sneezer, No. CR-91-054-PCT-RGS (D. Ariz.)

I represented the United States in this prosecution under the federal kidnapping and rape statutes. I also argued this case on behalf of the government before the Court of Appeals for the Ninth Circuit.

The defendant in this case picked up the female victim and her boyfriend while they were hitchhiking in Arizona. He used a stop with the pretext of allowing the man to relieve himself to kidnap the female, leaving the boyfriend and another passenger behind. The defendant drove his victim to a remote area on the Navajo Indian reservation where he raped her twice. The victim eventually broke away and ran. The defendant gave chase, threatening to kill her and her boyfriend. The victim was picked up by a passing motorist on a nearby highway.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00056 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.038

The defendant had been convicted of a nearly identical act of kidnapping and sexual assault three years earlier, but that conviction had been overturned based on the trial court's failure to give a jury instruction on voluntary intoxication. The case was tried June 4 - 6, 1991, before the Honorable Roger G. Strand. At trial, we introduced evidence of the prior kidnapping and rape under Federal Rule of Evidence 404(b). The defendant was found guilty of kidnapping and two counts of aggravated sexual abuse. He was sentenced to a term of 250 months imprisonment on each count.

The admission of evidence about the prior rape was one of several issues raised by the defendant on appeal. He also appealed the trial court's refusal to give an instruction on the defense of voluntary intoxication with respect to the kidnapping charge, and challenged the trial court's decision not to group the two rape counts together for sentencing. The Ninth Circuit upheld the government's use of evidence about the defendant's prior bad acts, and, in an issue of first impression, held that kidnapping under the provision at issue, 18 U.S.C. § 1201(a)(2), was a general, rather than a specific intent crime. Because the defense of voluntary intoxication is not a defense to a general intent crime, the Ninth Circuit held that it was not error for the district court to refuse the defendant's requested instruction. The Ninth Circuit overturned the district court's decision to sentence the defendant separately for each count of aggravated sexual abuse based on its interpretation of the Sentencing Guidelines and thus found that the court was required to group the two rapes for sentencing because of their temporal proximity. However, the Ninth Circuit panel recommended to the United States Sentencing Commission that it amend the guidelines "to avoid giving defendants a 'free rape' and to avoid forcing judges to go through the repulsive and dispiriting task of making timing distinctions in this area."

On remand for sentencing the defendant's original sentence was modified to reflect a grouping of the two rape counts. The Ninth Circuit affirmed the conviction. United States v. Sneezer, 983 F.2d 920 (9th Cir. 1992).

Counsel for defendant: Eugene A. Burdick, P.O. Box 5367, Mesa, Arizona 85211, 480-833-6166.

7. United States v. Johnson, No. CR-94-326-PHX-RCB (D. Ariz.)

I represented the United States in this prosecution under the federal statute concerning robbery of a postal employee. This case was the culmination of a series of investigative and prosecutorial efforts which resulted in the conviction of three individuals who were responsible for the aggravated robbery of a postal worker two years earlier. I received one of the highest awards given by the U.S. Postal Inspection Service for my work on this matter.

This aggravated robbery occurred at a docking area behind a post office in Mesa, Arizona, in December of 1992. Two masked men approached a postal worker who was loading a postal truck. One held the postal employee at gunpoint while the other went to

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00057 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.039

the rear of the postal truck and removed three mail pouches containing over $15,000. Postal Service investigators suspected that the robbery was an inside job, but the case went unsolved for almost two years. In early 1994, an individual incarcerated in the Kansas State penitentiary revealed to law enforcement officials that he had information relating to this robbery.

Several obstacles had to be overcome to have the Kansas prisoner transferred to Arizona so he could act as a confidential informant and make key phone calls and meetings with the individuals suspected of being involved in the robbery.

After the first suspect was captured on audio and video tape, he agreed to cooperate against the other robber. Covert audio and video surveillance was again used to record the second robber not only admitting his involvement, but also re-enacting it. He was arrested and also agreed to cooperate against the mastermind of the robbery, a former postal employee named Robert Johnson.

After several phone calls with the cooperating co-defendants, the third defendant, Robert Johnson, ultimately confessed.

All three pleaded guilty. Robert Johnson entered into a plea agreement on October 25, 1994, before the Honorable Robert C. Broomfield and was sentenced to a term of nine years' imprisonment. The Ninth Circuit affirmed. United States v. Johnson, 69 F.3d 545 (9th Cir. 1995).

Counsel for defendant: J. Douglas McVay, 207 West Clarendon, Suite 3, Phoenix, Arizona 85013, 602-264-2636.

8. United States v. Proshak, No. CR-90-358-PHX-EHC (D. Ariz.)

I represented the United States in this federal counterfeiting and fraudulent passport possession case. I was the sole counsel on the case, and represented the United States before the Court of Appeals for the Ninth Circuit.

The defendant was found uttering counterfeit money with another individual at a shopping mall in Phoenix, Arizona. A large amount of counterfeit cash was found hidden in the car the two individuals had been driving. The defendant had an extensive and violent criminal background, including prostitution, resisting a public officer, assault with intent to commit rape, and kidnapping. He was also suspected of being a member of a Russian organized crime ring out of California.

The defendant pleaded guilty on March 4, 1991, before the Honorable Earl H. Carroll and was sentenced to a term of 24 months imprisonment. His sentence was ordered to run consecutive to his term of imprisonment for other state crimes in California. The defendant filed an appeal challenging the consecutive nature of his federal sentence. The Court of Appeals for the Ninth Circuit upheld the sentence. The Ninth Circuit affirmed

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00058 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.040

the conviction and sentence in May of 1992. United States v. Proshak, 963 F.2d 381 (9th Cir. 1992).

Counsel for defendant: Dennis G. Jones, 335 East Palm Lane, Phoenix, Arizona 85004, 602-553-9161.

9. State of Kansas v. Walker, Nos. 87 CR 0009, 87 CR 0350-A, 87 CR 424-B, (D. Court, Wyandotte County, Kan.)

I represented the State of Kansas in this child abuse, neglect and endangerment case involving two young boys (ages nine and twelve) who were physically and sexually abused by their stepmother. I also represented the State of Kansas on appeal before the Kansas Supreme Court.

The defendant stepmother physically beat the twelve-year-old boy regularly with her fists and, on occasion, with a two-by-four. In addition to the physical abuse, the defendant made both boys perform oral sex on her as "reward" for good behavior and as "punishment" for bad behavior. The boys' natural father was aware of the abuse, and did nothing to stop it.

The state of the home was described by social workers as filthy and deplorable, and the children came to school improperly clothed and unusually hungry. The stepmother and father were aware that the twelve-year-old suffered from a rare and terminal disease (juvenile Huntington's Chorea), and that the younger boy ran a high risk of contracting the same illness. The stepmother and father denied the children necessary medical treatment and medication for their respective medical problems.

The children's father was charged with aiding and abetting the stepmother's crimes, and he pleaded guilty before trial pursuant to a plea bargain. The stepmother was charged with two counts of aggravated criminal sodomy, two counts of endangering a child, and one count of terroristic threats (for her threats against a hospital social worker who had prohibited her from seeing the older boy during the boy's stay in a hospital psychiatric ward for children). This case was tried July 21 to 27, 1987, before the Honorable Dean J. Smith. The evidence included expert testimony and eyewitness testimony from the younger boy. (The older boy was too ill to testify.) The defendant was found guilty on all counts.

The defendant was sentenced to a term of not less than fifteen years or more than life imprisonment on one count of aggravated criminal sodomy and to a term of not less than 5 years or more than 20 years on the second count of aggravated criminal sodomy. The two sentences were ordered to be served consecutively. The defendant was sentenced to a term of one year on each count of endangering a child – to be served concurrent with each other and concurrent with the other charges. The defendant was sentenced to a term of not less than one nor more than five years for making a terroristic threat. This sentence was ordered to run consecutively to the other charges. The Kansas Supreme Court found in favor of the State on appeal. The Supreme Court of the State of Kansas

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00059 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.041

affirmed the conviction in January of 1989. Kansas v. Lorie Walker, 244 Kan. 275, 768 P.2d 290 (1989).

Counsel for defendant: Annette Jackson, 6582 West 49th Street, Mission, Kansas 66202, 913-362-0544.

10. State of Kansas v. Moppin, No. 87 CR 925 (D. Ct., Wyandotte County, Kan.)

I represented the State of Kansas in this prosecution of child sexual abuse offenses. I also represented the State of Kansas on the appeal of this matter to the Kansas Supreme Court.

This case involved the sexual abuse of a five-year-old girl by her natural father, who was a Kansas City, Kansas, police officer. The trial received significant local media attention.

This case was tried April 4 to 7, 1988, before the Honorable Cordell Meeks, Jr. At trial, the victim testified about the defendant's commission of oral sex on her and the defendant's sexual fondling of her. He was convicted on both counts. The defendant was facing a term of not less than three years, or more than five years on the indecent liberties count, and to a term of not less than five years, or more than twenty years on the aggravated criminal sodomy count. The defendant was then granted probation. The defendant nonetheless appealed his conviction.

On appeal, the defendant's conviction for indecent liberties was upheld, but his conviction for aggravated criminal sodomy was overturned. The Kansas Supreme Court determined that the definition of "sodomy" under the relevant criminal code did not include oral contact with the genitals of a female.

Subsequent to the appellate ruling, a subcommittee of the Kansas legislature convened a hearing to address the issues in the sexual abuse provisions of the criminal code that had been highlighted in this case. I testified at that hearing about the relevant statutes. The Supreme Court of the State of Kansas issued its decision affirming the conviction in part, reversing in part, and vacating in part on December 8, 1989. Kansas v. Moppin, 245 Kan. 639, 783 P.2d 878 (1989).

Counsel for defendant: John Duma, 831 Armstrong, Kansas City, Kansas 66101, 913-342-7070

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00060 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.042

As a state and federal prosecutor, most of my significant legal activities involved trial litigation in the area of violent crime.

As Director of the Executive Office for United States Attorneys, I provided administrative oversight of and support to the 94 United States Attorneys' offices, comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), approximately 5,000 Assistant United States Attorneys, and approximately 5,000 support staff employees. I served as liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions and other Department components. I supervised 22 components comprised of approximately 270 people. I was also responsible for the administration of an appropriation of more than 1 billion dollars.

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

    None.

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

    None.

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

    I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00061 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.043

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       No family members, categories of litigation, or financial arrangements are likely to present potential conflicts-of-interest. With respect to persons other than family, if the City of Chandler were to appear as a party in a case to which I was assigned, I would recuse myself because of my long-standing friendship with the Chandler City Attorney. I have a few close personal friends who practice as attorneys before the Court of Appeals; if any of these attorneys appeared before me in a case, I would disclose the relationship and/or recuse.

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

       If confirmed, I will continue to consult and apply the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

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

    In my role as a judicial officer, my ability to participate in pro bono work has been limited. However, in accordance with this limitation, I established a program for disadvantaged youth called "Court Works – Kids to Court," which is now in its fifth year. Each year, approximately 300 children and their teachers prepare for, and participate in, a mock trial at the District Court. The program is designed to introduce youngsters to the judicial system and create a context for a professional career in law. It also serves to bring the community to the Sandra Day O'Connor Courthouse, which I believe is a vital role of the District Court.

26. **Selection Process**:

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00062 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.044

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. On January 15, 2010, I received a telephone call from an attorney in the Office of Legal Policy at the U.S. Department of Justice, who informed me that I was being considered for nomination to serve as a judge on the United States Court of Appeals for the Ninth Circuit. Since that time, I have been in contact with pre-nomination officials at the Department of Justice. On February 17, 2010, I interviewed in Washington, D.C., with officials from the White House Counsel's Office and the Department of Justice. On March 25, 2010, the President submitted my nomination to the Senate.

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

No one involved in the process of selecting me as a judicial nominee has discussed any case, legal issue or question with me.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00063 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.045

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
MURGUIA, MARY H.	NINTH CIRCUIT	03/23/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
CIRCUIT JUDGE- NOMINEE	☑ Nomination, Date 03/25/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 02/28/2010
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.**	
US COURT HOUSE STE 525 401 W WASHINGTON ST SPC 53 PHOENIX, ARIZONA 85003-2154	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.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	MURGUIA, MARY H.	03/23/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	MURGUIA, MARY H.	03/23/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting MURGUIA, MARY H.	Date of Report 03/23/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date Month - Day	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
1. AMERICAN FUNDS NEW PERSPECT IVE FUND-A	A	Dividend	J	T	Exempt				
2. AMERICAN FUNDS FUNDAMENTAL INVESTORS-B	A	Dividend	J	T					
3. AMERICAN FUNDS FUNDAMENTAL INVESTORS - A	A	Dividend	J	T					
4. FIRST CREDIT UNION ACCOUNTS	A	Interest	K	T					
5. NORTHWESTERN MUTUAL VARIABLE LIFE INSURANCE	A	Dividend	K	T					
6. IRA AMERICAN FUNDS #1 NEW PERS PECTIVE FUND-A	A	Dividend	J	T					
7. IRA AMERICAN FUNDS #2 WASHINGT ON MUTUAL INVESTORS FUND-A	A	Dividend	J	T					
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting MURGUIA, MARY H.	Date of Report 03/23/2010

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

3A- NONE REPORTABLE NON-INVESTMENT INCOME WAS EARNED DURING THE REPORTING PERIOD. (SALARY FROM THE U.S. GOVERNMENT FOR SERVICE AS A US DISTRICT JUDGE).

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting MURGUIA, MARY H.	Date of Report 03/23/2010

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 _____

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		18	636	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		6	995	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		130	168
Real estate owned-add schedule		330	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		41	850	Automobile Note		17	802
Cash value-life insurance		22	675	Estimated income taxes on differences			
Other assets itemize:				between estimated current values of			
Thrift Savings Plan		299	405	assets and their tax bases		109	310
Mortgage Escrow Balance		2	211				
IRAs - see schedule		9	159	Total liabilities		257	280
				Net Worth		473	651
Total Assets		730	931	Total liabilities and net worth		730	931
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		YES	
On leases or contracts				Are you a defendant in any suits or legal actions? - see schedule		YES	
Legal Claims				Have you ever taken bankruptcy?			NO
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds - New Perspective Fund - A	$ 1,036
American Funds - Fundamental Investors - A	909
American Funds - Fundamental Investors - B	5,050
Total Listed Securities	$ 6,995
Real Estate Owned	
Personal residence	$330,000
Real Estate Mortgages Payable	
Personal residence	$130,168
Other Assets Itemize:	
IRA American Funds #1 New Perspective Fund - A	$ 3,263
IRA American Funds #2 Washington Mutual Investors Fund - A	5,896
Total Other Assets Itemize - IRAs	$ 9,159

General Information

Pledged Assets - Personal residence
- Personal auto

I have been named as a defendant in suits or legal actions only in my judicial capacity.

AFFIDAVIT

I, **MARY HELEN MURGUIA,** do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Apr. 19, 2010
(DATE)

(NAME)

Linda S. South
(NOTARY)

LINDA S. SOUTH
Notary Public - State of Kansas
My Appt. Expires 08/10/2010

Senator DURBIN. Thank you very much. And let me just say that the story of your family is an inspiration. It is not just an immigrant story. It is an American story, and the decision of your mother and father to come to this country has made this a better nation, as we can tell from your service and the contributions which all of your family have made, which you have alluded to in your introduction.

So I am touched by it, being first generation American myself and presiding over this Judiciary Committee hearing. It is a reminder of who we are and, at times, we need that reminder.

I would like to, if I could——

Judge MURGUIA. Thank you, Senator. Thank you.

Senator DURBIN. Of course. I would like to just ask a substantive question or two. When you reach the circuit court level, you have to expect some serious questions and I hope you will bear with me.

Judge MURGUIA. Of course.

Senator DURBIN. In the 1980s, Congress passed a law to address the crack cocaine scourge in America. History shows that we may have gone too far.

We established sentencing guidelines for crack cocaine that were 100 times the standard used for powder cocaine. It has resulted in what many consider to be unfortunate outcomes, many even unjust.

Having voted for that legislation, at a time, I can tell you that we were in just mortal fear that this new narcotic would come in dirt cheap, highly addictive, destroying lives and the lives of children who were born by the addicts. And so we reacted with a 100-to-1 sentencing standard.

Now, this committee, in an extraordinary bipartisan effort, has reduced the disparity in a bill that we passed from 100-to-1 to 18-to-1. Some may argue it should be 1-to-1, which is my position, but it is the nature of a compromise that we have tried to come down to a level of 18-to-1, which has passed the Senate.

Can you share your views on the crack/powder disparity and can you tell me what Federal judges can do, if anything, to reduce the disparate impact that criminal laws such as this might have on the poor and minorities?

Judge MURGUIA. Well, Senator, Mr. Chairman, thank you for your question. I think the current sentencing structure post *Booker* gives the judges a great deal of freedom in fashioning individualized sentences for each defendant based on their history, characteristics, and the facts and circumstances surrounding the case.

And so I have found, in my experience, that the post *Booker* sentencing structure allows us to take into consideration all the aspects of everyone's background and their experience—I'm sorry—their background, their criminal history, and the facts and circumstances surrounding the case. And their history, we have to evaluate their personal, social, and criminal history when we sentence.

Obviously, the guidelines, the United States sentencing guidelines are important and they need to be respected. They provide a very important framework and a fair process in evaluating each case and allow—they are an important tool to ensure fairness among similarly situated defendants.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00072 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

So I think our current sentencing structure, hopefully, takes all of that into account.

Senator DURBIN. Have you had any experience, any professional or legal experience with this sentencing disparity?

Judge MURGUIA. I have not.

Senator DURBIN. I will not pursue that any further, but I thank you for your response there.

You did have a Fair Labor Standards Act case, called *Stickle* v. *SCI Western Market Support Center*, in which the plaintiffs alleged their employer failed to pay them adequate wages. The employer filed a motion to dismiss under the *Twombly* standard, but you denied the motion and ruled the case could go forward.

What has been your experience applying the new standard set forth in the *Twombly* and *Iqbal* cases? Have you or your colleagues had any cases in which plaintiffs would have prevailed under the old standard, but had to be dismissed under this new Supreme Court standard?

Judge MURGUIA. I don't—just based on my experience, *Twombly*, the effects of *Twombly* are still being set forth, I think, as time passes. It hasn't been into effect for a long time, that I know of any studies that have happened.

But in my experience, I think it just allows the courts a good ability to determine whether or not the cases are meritorious, that they rise above a pure speculative level, if there's a plausible claim.

The *Stickle* case is currently ongoing and I allowed it to go forward. I thought it was the right decision to do. So I think it also allows for a fair process.

Senator DURBIN. When the Supreme Court overturned the 50-year precedent of *Conley* v. *Gibson* and raised the bar for filing such complaints in Federal court, many believe that it made it more difficult for some workers, consumers, and victims of discrimination to proceed with their lawsuit.

Your decision in the *Stickle* case appears to have given that plaintiff another day in court, at least an opportunity to proceed. Do you feel that this new standard makes it more difficult for petitioners or plaintiffs to prevail in these types of cases?

Judge MURGUIA. I don't know that it makes it more difficult at this point.

Senator KYL. Thank you, Mr. Chairman.

I have selected four questions in disparate areas to ask you, and so let me just take them one at a time here.

The first has to do with reassignment of a case, the controversial Arizona case of *Chamber of Commerce* v. *Candelaria*, the case involving the Arizona statute imposing sanctions on employers who hire illegal immigrants.

According to an Associated Press article December 11, 2007, you had originally been assigned to that case and, according to the article, you reassigned the case back to Judge Wake.

Can you tell us—and this case was controversial, I will tell my colleagues, and has now been taken by the U.S. Supreme Court after the lower court decision was unanimously upheld.

Can you tell us why you reassigned the case, Judge?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00073 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Judge MURGUIA. Certainly, Senator Kyl. That—I reassigned that case based on our local rules involving assignment of cases and transfer of cases. That case actually had a history in our court.

Judge Wake had been presiding over the original version of that case for about 6 months. There were issues regarding a deadline. I think the law was going to go into effect in January.

But Judge Wake, in the 6 months that he had the original version, an almost identical version of the case that was later refiled, had a trial on the merits, due to the request for a preliminary injunction; had considered and had several days of hearings regarding the motions to dismiss; and, ultimately, I think with about 20 days left before the law was to go into place, made a ruling.

He had to make a ruling on that case, and found that issues surrounding standing prevented him or you didn't need to go to the merits, because there was an issue regarding standing in that case. And so he issued his ruling and issued judgment.

The parties, instead of appealing or filing a motion for reconsideration, simply seemed to take guidance from his order and refiled the case within 2 days.

That case, which was almost identical to the original version of that case, was eventually assigned to me. When I saw the nature of the case and what was happening, I consulted the rules, which indicate that if a judge has a prior familiarity with the case and the issues and if it will avoid substantial duplication of proceedings and hearings, it should be reassigned.

And so I simply was following the rules of assignment and transferring of cases.

Senator KYL. Thank you. The second question has to do with a matter of recusal. In July of 2009, you recused yourself from a case alleging racial profiling by the Maricopa County Sheriff's Office. That is the county in which Phoenix, Arizona is located.

Immediately after you denied the defendant's motion to dismiss the case, there were allegations made that your sister's political beliefs might affect your judgment in the matter. You denied those allegations, but you still recused yourself from the case based on the remote possibility that there might be some appearance of bias.

I think that is correct. Correct me if I am wrong. Would you say that you declined to serve in that case out of concern for the integrity of the judiciary, as a whole?

Judge MURGUIA. Let me separate that out. Yes, I did ultimately recuse myself from that case. Always, when we review cases of recusal, a core concern is the integrity of the judiciary, and I think I referred to that in my order.

I actually found that there was no actual bias, that I could have been fair; there was no conflict of interest; that I could have presided over their case. My reason for recusal was based on a very narrow basis, and that's whether or not someone could—might reasonably question my impartiality based on the specific and unique circumstances and facts surrounding that case.

That was the only basis. My sister, yes, is a president and CEO of an Hispanic civil rights organization. She has quite a different role than I do as a Federal judge, and I'm very cognizant of that.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00074 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

I guess I just want to be very clear that her views or opinions do not influence my decisions as a judge. Her views, my sister's, or any close sibling of mine or anyone else, including my own views, do not enter into my decisionmaking.

I had to make a very careful review of the recusal statutes in that case and my code of conduct as a judge, and after careful review and because of the very unique circumstances and details surrounding that case, I entered a recusal.

Senator KYL. Thank you very much.

Senator DURBIN. I have no further questions. I do not know if you do, Senator Kyl.

Senator KYL. Let me just ask one more orally and then maybe just submit two for the record. They are both very brief.

The one that I would just ask you orally here. In your questionnaire, you reported that 100 percent of your practice as an attorney was devoted to criminal law matters, both as state and Federal prosecutor, and that about 68 percent of your cases during your time on the district court bench have been criminal cases.

One attorney, as a result of this, expressed concern that your legal ability is much stronger on the criminal side than the civil.

Could you tell us, briefly, how your time on the district court will prepare you to handle appeals in civil matters, if you are confirmed to a seat on the ninth circuit court?

Judge MURGUIA. Certainly, Senator Kyl. I've had a remarkable experience as a district court judge, presiding over a wide variety of civil cases, including tort and contract disputes, cases involving patent infringement, class action cases, and a variety of class action cases, securities fraud, Fair Labor Standards Act, consumer fraud.

I have also been asked to preside over multi-district litigation cases, which, by their nature, are very complex. I think that experience of presiding over those cases gives me a very good understanding of what litigants face, of what trial lawyers at the district court level confront, and what trial judges, the decisions that they have to make and the issues that they have to resolve almost on a daily basis.

And I think that that experience would be extremely beneficial to me as a circuit court judge in the ninth circuit, if I'm fortunate enough to be confirmed.

Senator KYL. Actually, the majority of cases that are considered by all of the judges in the district court are criminal rather than civil; are they not?

Judge MURGUIA. That's correct. We're the number one district of handling criminal cases in the ninth circuit. I think we're the third overall in the country.

Senator KYL. Well, I will submit a couple other questions for the record. I really appreciate your testimony. Welcome, and we look forward to a speedy confirmation of your nomination.

Judge MURGUIA. Well, I thank you and the Chairman for all of your questions and for your help and support. Thank you very much.

Senator DURBIN. Judge Murguia, there may be some written questions sent by Senator Kyl, myself, or other members of the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00075 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

committee, which I am sure you will be attentive to, which we would appreciate very much.

We thank you very much for your joining us.

Judge MURGUIA. Certainly.

Senator DURBIN. And thank your family, as well, for being part of this hearing.

Judge MURGUIA. Thank you very much.

Senator DURBIN. Thank you.

We will now take a minute to reset the table for the next panel, which includes four nominees to the district court: Edmond Chang from Illinois; Leslie Kobayashi of Hawaii; Denise Casper of Massachusetts; and Carlton Reeves of Mississippi.

[Pause.]

Senator DURBIN. I would like to ask the four nominees, if they would, please, to stand, as you are, and raise your right hand.

[Nominees sworn.]

Senator DURBIN. Let the record reflect that the four nominees all answered in the affirmative, which makes the next stage of this much easier.

I would like to give each of you a chance to introduce your family members and say a few words.

I do not know, I guess, if there is an order here that should be followed. I did not want to show favoritism, but Mr. Chang first.

STATEMENT OF EDMOND E-MIN CHANG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. CHANG. Thank you, Senator. First, I want to thank you, Senator Durbin and Senator Kyl, for holding this hearing. I very much appreciate that.

I also want to express gratitude to President Obama for the deep privilege of this nomination.

I would also like to thank you specifically, Senator Durbin, for your support and the warm words of introduction. I very much appreciate that.

I'd like to acknowledge and thank my family and friends who were able to attend the hearing in person. And so I have with me—and I hope they will stand and get my thanks—my mother, Esther Chang; my wife, Jeannie Chang; and my lovely daughters, Emily and Claire. Also, a great college friend of mine, Lawrence Wu, is here from Michigan. I have known him for over 20 years.

If I could also take a moment to acknowledge and thank some of my family who were not able to attend in person because of scheduling and other travel conflicts, the first of which is my father, Lawrence Chang, who is overseas in Taiwan. I want to thank him very much. And my older sister, Elizabeth, and her husband, Scott, and my nephews, Matthew and Michael. I know they're watching the Webcast.

Also, my younger sister, Elaine; her husband, Henry; and, their girls, Chloe and Elise, are watching. And I want to thank my in-laws, as well, Shun-Yu Tiao and Chen-Kun Tiao; and my brother-in-law, Andy Tiao, his wife, Michelle, and their kids, Alex, Katie and Chris.

Thank you for the opportunity to make those remarks.

Senator DURBIN. Thank you very much, Mr. Chang.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00076 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Nominee Kobayashi? Have I pronounced that correctly?
[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Edmond E-Min Chang

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

   United States District Judge for the Northern District of Illinois

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

   Office: United States Attorney's Office
   Northern District of Illinois
   219 South Dearborn Street
   Fifth Floor
   Chicago, Illinois 60604

   Residence: Northbrook, Illinois

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

   1970; New York, New York

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

   1991 – 1994, Northwestern University School of Law; J.D. (*cum laude*), 1994

   1987 – 1991, University of Michigan (Ann Arbor): B.S.E. (*cum laude*), 1991

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

1999 to present
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Chief of Appeals, Criminal Division (2005 – present)
Deputy Chief, General Crimes (2004 – 2005)
Assistant United States Attorney (1999 – present)

1997 to 1999 & Summer 1993
Sidley & Austin (now Sidley Austin LLP)
One South Dearborn Street
Chicago, Illinois 60603
Associate (1997 – 1999)
Summer Associate (partial summer 1993)

1996 to present (various semesters)
Northwestern University School of Law
357 East Chicago Avenue
Chicago, Illinois 60611
Adjunct Professor of Law

1995 to 1997
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to the Honorable Marvin E. Aspen

1994 to 1995
United States Court of Appeals for the Sixth Circuit
231 West Lafayette Boulevard
Detroit, Michigan 48226
Law Clerk to the Honorable James L. Ryan

Summer 1994
Law Offices of Chicago-Kent College of Law
565 West Adams Street
Chicago, Illinois 60661
Public Interest Law Initiative Fellow

1993 to 1994
Northwestern University School of Law
357 East Chicago Avenue
Chicago, Illinois 60611
Teaching Assistant

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00079 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.055

1993
Chicago Lawyers' Committee for Civil Rights Under Law
100 North LaSalle Street
Chicago, Illinois 60602
Intern (fall semester) (unpaid)

Summers 1993 & 1992
Keck Mahin & Cate (since dissolved)
77 West Wacker Drive
Chicago, Illinois 60601
Summer Associate (partial summer 1993 and summer 1992)

1991
University of Michigan, College of Engineering
Robert H. Lurie Engineering Center
1221 Beal Avenue
Ann Arbor, Michigan 48109
Recruiter

Other Affiliation

2000 to 2004
Chicago Council of Lawyers
750 North Lake Shore Drive, 4th Floor
Chicago, Illinois 60611
Board Member (unpaid)

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

I have not served in the military. I registered for selective service upon reaching eighteen years of age.

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

Star of Distinction for Task Force Investigation & Prosecution, Chicago Crime Commission (Nov. 2008)
Drug Enforcement Administration Certificate of Appreciation for Outstanding Contributions in the Field of Drug Law Enforcement (May 2005)
Order of the Coif (May 1994)
Articles Editor, Northwestern University Law Review (1993 - 1994)
Staff Member, Northwestern University Law Review (1992 - 1993)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00080 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.056

National Environmental Moot Court Competition: Quarterfinalist (1993)
Julius H. Miner Moot Court Competition: Top 5 Brief (1993)
Arlyn Miner Book Award for Excellence in Legal Writing & Research (1992)
Sigma Gamma Tau, National Aerospace Engineering Honorary Society (1990)
College of Engineering Outstanding Student Leader Award (1990)
Member, Vulcans, University of Michigan Senior Engineering Honorary Society (1990)

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

American Bar Association
Asian-American Bar Association
    Judicial Evaluations Investigator (1997 – 1999, 2008)
Chicago Bar Association
Chicago Council of Lawyers
    Board of Governors (2000 – 2004)
    Judicial Evaluations Investigator (1999 – 2004)
Seventh Circuit Bar Association
Seventh Circuit Pattern Jury Instruction Revision Committee (2009 – present)
United States Department of Justice, Appellate Chiefs' Working Group (2005 - present)
United States District Court for the Northern District of Illinois
    Committee to Address Crack Cocaine Resentencings (2008 - present)
    Federal Magistrate Judge Merit Selection Panel (2000)

10. **Bar and Court Admission**:

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

    Illinois, 1994

    There has been no lapse in membership.

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

    Supreme Court of the United States, 2008
    United States Court of Appeals for the Seventh Circuit, 1995
    United States Court of Appeals for the Sixth Circuit, 1994
    United States District Court for the Northern District of Illinois, 1995

    There has been no lapse in membership.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00081 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.057

11. **Memberships**:

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

Adler Planetarium (2009 – present)
Brookfield Zoo (approximately 2004 - 2008)
Chicago Botanic Garden (approximately 2005 - present)
Food Allergy Awareness Network (approximately 2004 - present)
Kohl Children's Museum (approximately 2004 - present)
Northwestern University Alumni Association (1994 – present)
University Club of Chicago (1998 – 2000)
University of Michigan Alumni Association (approximately 1991 – present)

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

None of the listed organizations presently engages or formerly engaged in invidious discrimination of any kind.

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

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

Letter to the Editor, 83 A.B.A. Journal 10 (Aug. 1997) (copy of unedited version and copy of published (edited) version are supplied).

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00082 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.058

In October 2002, when I served on the Board of Governors of the Chicago Council of Lawyers, the Council issued "Child Support in Cook County, Illinois: A Call for Reform" (copy supplied).

Over the years, I have prepared short (typically, a few paragraphs) reports for various bar associations in connection with evaluating the suitability of individuals for judicial office. Specifically, I prepared reports for the Chicago Council of Lawyers and the Asian-American Bar Association of Chicago in connection with evaluating candidates running for state judicial office or state judges seeking retention in an election. Additionally, I prepared a draft evaluation for the Chicago Council of Lawyers in connection with evaluating a federal district judge, as part of the Council's periodic evaluation of all sitting federal judges. Also, as a member of the 2009 Federal Magistrate Judge Merit Selection Panel for the U.S. District Court for the Northern District of Illinois, I prepared a report, for the Panel's internal use, evaluating one of the applicants for the position. I do not recall the names of many of the individuals whom I helped to evaluate, and I do not have copies of those reports. Most of the reports were for internal use by the particular bar association and not for further public dissemination, and the information in the reports was gathered from interviewees who were promised confidentiality.

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

None.

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

Over the last several years I have spoken frequently on a variety of topics, including criminal law, professional training and opportunities, and issues relating to my experience as an Asian-American lawyer. I have listed below all of the speaking engagements I could identify through a search of my calendar and internet databases, and I have attached all related material that I could locate.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00083 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.059

October 20, 2009 – Panel Member, Asian-American Lawyers' Experience in the Workplace, DePaul Law School Asian-Pacific American Law Students Association (no prepared text, outline, or notes)

October 17, 2009 – Panel Member, Law Student Career Forum, and Mentoring and Resume Review, Asian-American Bar Association, Held at DePaul Law School (no prepared text, outline, or notes)

August 19, 2009 – Moderator & Panelist, Career Opportunities and Other Developments at the U.S. Attorney's Office in an Environment of Reinvigorated Enforcement, Asian-American Bar Association, Chicago, Illinois (outline attached)

August 13, 2009 – Panel Member , Working at the Office of the U.S. Attorney, and Instructor, Preparing for Oral Argument, Just the Beginning Foundation, Summer Legal Institute, Held at DePaul Law School (no prepared text, outline, or notes)

June 1, 2009 – Faculty, How to Deliver Oral Argument, Chicago Bar Association & Seventh Circuit Bar Association: Appellate Practice in the Seventh Circuit Court of Appeals, Chicago, Illinois (outline attached)

March 9, 2009 – Panel Member, Perspectives: Prosecuting/Defense Attorney, Asian/Pacific-American Law Student Association Heritage Month, Northwestern University School of Law (no prepared text, outline, or notes)

October 22, 2008 – Speaker, Criminal Appeals in the United States, Department of Justice program for the Delegation from the Thailand Narcotics Control Board, held at U.S. Attorney's Office, Northern District of Illinois (no prepared text; copy of outline attached)

November 9, 2007 – Keynote Speaker, Asian-American Law Students' Association NovemberFest, John Marshall Law School (copy of remarks is attached)

October 9, 2007 – Panel Member, Recruiting for U.S. Attorney's Office, Black Law Students Association & Latino Law Students Association, Loyola University School of Law (no prepared text, outline, or notes)

March 5, 2007 – Panel Member, Equal Treatment Under Civil Rights Law, Asian/Pacific-American Law Student Association Heritage Month Heritage Month, Northwestern University School of Law (no prepared text, outline, or notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00084 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.060

October 17, 2006 – Panel Member, Recruiting for U.S. Attorney's Office, Asian-Pacific American Law Students Association, DePaul University School of Law (no prepared text, outline, or notes)

October 4, 2006 – Panel Member, Recruiting for U.S. Attorney's Office, Asian-Pacific American Law Students Association, John Marshall Law School (no prepared text, outline, or notes)

May 9-12, 2006 – Panel Member, Management of Immigration Appeals, and Discussion Leader, Seventh Circuit Appellate Chiefs' Meeting at the National Appellate Chiefs' Conference, National Advocacy Center, Columbia, South Carolina (did not retain outline)

December 1, 2005 – Lecturer, Case Law Concerning Crack Cocaine, Annual Meeting of Forensic Chemists, Drug Enforcement Administration, North Central Laboratory, Chicago, Illinois (no prepared text, outline, or notes)

September 28, 2005 – Panel Member, Federal Sentencing Post-Booker, Federal Bar Association, Chicago, Illinois (no prepared text; copy of outline attached)

August 11, 2005 – Speaker, The Federal Criminal System, The 21st Century Institute, Program for Lawyers & Judges from China, The John Marshall Law School (no prepared text; copy of outline attached)

March 15, 2005 – Lecturer, Wiretap Investigations Training for New Agents, Federal Bureau of Investigation, Chicago Field Office (no prepared text, did not retain outline or notes)

March 5, 2005 – Keynote Speaker, Asian/Pacific-American Heritage Week, Northwestern University School of Law (copy of prepared remarks is attached)

January 26, 2005 – Speaker, The Federal Criminal System, Program for Lawyers & Judges from China, The John Marshall Law School (no prepared text, outline, or notes)

February 7, 2003 – Speaker, The Federal Criminal System, Program for Lawyers & Judges from China, The John Marshall Law School and the Chinese American Bar Association (no prepared text, outline, or notes)

March 5, 2002 – Moderator, Panel: The War on Drugs, Northwestern University School of Law, Public Interest Law Week (no prepared text, outline, or notes)

May 1990 – University of Michigan College of Engineering Graduation: as Graduation Committee Chairperson, I gave brief congratulatory remarks to the Senior class on behalf of the Junior class (I did not retain copy of text).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00085 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.061

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

The Chicago Lawyer, *Sentencing Experts Navigate a Post-Booker World* (June 2006) (copy supplied)
The Chicago Sun-Times, *Star Informant Helps Cops bust 'Murder, Inc.'* (Sept. 12, 2004) (copy supplied)
The Chicago Daily Law Bulletin, *Judges slaughter their clerks* (June 2, 1997) (copy supplied) (describing outcome of judges v. law clerks softball game)

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00086 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.082

any of the opinions listed were not officially reported, provide copies of the opinions.

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have not served as a judge.

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

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

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

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00087 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.063

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

I have not held memberships, offices, positions, or roles in any political party, election committee, or political campaign.

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

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

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

Honorable James L. Ryan, United States Court of Appeals for the Sixth Circuit, August 1994 to July 1995

Honorable Marvin E. Aspen, United States District Court for the Northern District of Illinois, August 1995 to September 1997

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

I have not practiced alone.

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

1999 to present
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Chief of Appeals, Criminal Division (2005 – present)
Deputy Chief, General Crimes (2004 – 2005)
Assistant United States Attorney (1999 – present)

1997 to 1999
Sidley & Austin (now Sidley Austin LLP)
One South Dearborn Street
Chicago, Illinois 60603
Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00088 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.064

Summer 1994
Law Offices of Chicago-Kent College of Law (legal clinic)
565 West Adams
Chicago, Illinois 60661
Public Interest Law Initiative Fellow

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 1994 to 1995, I served as a law clerk to Judge James L. Ryan on the U.S. Court of Appeals for the Sixth Circuit. I wrote bench memoranda and drafted opinions in a wide variety of federal cases. From 1995 to 1997, I served as a law clerk to then-Chief Judge Marvin E. Aspen on the U.S. District Court for the Northern District of Illinois. I assisted the judge in managing his docket, drafted opinions in federal cases in primarily federal civil litigation, and advised the Judge on grand jury matters. From 1997 to 1999, I represented primarily corporations and universities as a member of Sidley & Austin's employment and labor law group.

In December 1999, I began serving as an Assistant United States Attorney in the General Crimes Section of the U.S. Attorney's Office for the Northern District of Illinois. In late 2001, I joined the Narcotics and Gangs Section. I investigated and prosecuted a wide variety of federal crimes, including drug, gun, child exploitation, fraud, tax, extortion, and other cases. In addition to conducting trials, I was responsible for all aspects of pre-trial litigation, including examining witnesses and presenting arguments at numerous preliminary hearings, detention hearings, hearings on pre-trial motions, and sentencings.

In January 2004, I was promoted to Deputy Chief in the General Crimes Section, where I supervised and trained new prosecutors, and also maintained a personal caseload. Since July 2005, I have served as the Chief of Appeals of the Criminal Division. My duties include supervising our Office's litigation in the U.S. Court of Appeals for the Seventh Circuit, and I have supervised the briefing and oral argument in more than 300 appeals. I also advise prosecutors throughout the Office on any question that has arisen in an investigation or in the district court, while

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00089 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.065

still maintaining a district court and appellate caseload.

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

At Sidley & Austin, I represented primarily corporations and universities in employment and labor law matters.

At the United States Attorney's Office, I represent the United States in federal criminal cases.

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

At Sidley & Austin, I estimate that 90% of my work was litigation, approximately half of which was in federal court, and the other half in arbitrations to neutral adjudicators. The court and arbitration matters were civil-law proceedings and occasionally appeared in court or at the arbitration proceeding. I did represent, pro bono, a state habeas petitioner in pursuing a habeas petition in federal court; such petitions are technically denominated as a civil matter, but they involve criminal law issues.

At the United States Attorney's Office, my appearances are 100% in federal court, occur frequently, and are in criminal cases at all stages, including initial prosecution, appeal, and post-conviction litigation. I have prosecuted approximately 150 defendants, tried 10 cases to verdict, personally handled 30 appeals, and supervised the briefing and argument in more than 300 appeals. On occasion, in addition to criminal matters, I am asked to provide legal advice on civil matters, such as civil suits by or against the United States, and civil forfeiture cases.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record:
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 3%
   2. criminal proceedings: 97%

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00090 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.066

I have tried 10 cases to verdict, all in federal court. In all trials, a co-counsel and I tried the case together.

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

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

I have not appeared as counsel in the Supreme Court of the United States. In my role as Chief of Appeals for the United States Attorney's Office, I have provided substantive input into Supreme Court filings drafted by the Department of Justice Appellate Section and the Office of the Solicitor General in cases from my district. These filings primarily consist of briefs-in-opposition to certiorari petitions in cases where the government has prevailed in the Seventh Circuit.

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

a. the date of representation;

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

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

1. *United States v. Putnam*, 03 CR 268, Northern District of Illinois, U.S. District Judge Robert W. Gettleman.

Anicom, Inc. was an international distributor of wire and cable. Senior executives cooked the books in order to meet investor expectations, but eventually the company crashed and declared bankruptcy, wiping out over $80 million in shareholder value. Along with the FBI and another prosecutor, starting in 2002, I investigated the numerous sales and accounting frauds that drove the scheme, and obtained securities fraud and related charges against 7 former executives, including the former CEO, CFO, COO, and Controller. I then briefed and argued responses to the numerous pre-trial motions filed

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00091 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.067

by the defendants. Ultimately, we secured the guilty pleas of 6 defendants (the seventh passed away), the last of which was in 2007.

Co-counsel:

Sean Berkowitz
now at: Latham & Watkins
233 South Wacker Drive
Suite 5800
Chicago, IL 60606
(312) 777-7016

Opposing Counsel:

Jack Falvey for Carl Putnam
Goodwin Proctor LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 570-1344

Leo Cunningham for Don Welchko
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

Edward Genson for Scott Anixter
53 West Jackson Boulevard
Suite 1420
Chicago, IL 60604
(312) 726-9015

John Gallo for Ron Bandyk
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7494

Jeff Stone for Daryl Spinell
McDermott Will & Emery
227 West Monroe Street
Chicago, IL 60606
(312) 984-2064

Corey Rubenstein for John Figurelli
Stetler & Duffy, Ltd.
11 South LaSalle Street, Suite 1200
Chicago, IL 60603
(312) 338-0209

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00092 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.088

Gordon Nash for Rene Levault
Drinker Biddle
191 North Wacker Drive
Suite 3700
Chicago, IL 60606
(312) 569-1384

2. *United States v. Abdelhaq*, 246 F.3d 990 (7th Cir. 2001), USCA No. 00 C 1894, Seventh Circuit Judges Flaum, Posner, and Coffey.

In this appeal, I represented the United States in seeking affirmance of the conviction of a defendant who murdered her infant child in order to reap $200,000 in life insurance benefits. The defendant attempted to disguise the murder as due to sudden infant death syndrome (SIDS). The evidence showed that this was the second infant whose murder she disguised as SIDS. On appeal, I learned the three-week trial record and the scientific evidence in order to author the response brief in 2000 and to present the oral argument in 2001. The Seventh Circuit affirmed the conviction.

Opposing Counsel: Scott Frankel
Frankel & Cohen
77 West Washington Street, Suite 1720
Chicago, IL 60602
(312) 759-9600

3. *United States v. Martin*, 04 CR 495, Northern District of Illinois, U.S. District Judge Rebecca R. Pallmeyer

The Mafia Insane Vice Lords street gang operated dozens of drug-dealing spots on the west side of Chicago. Along with a multi-agency team of investigators, starting in late 2002, I investigated the gang from the bottom-up, eventually obtaining enough evidence to convict the "King" of the gang, Martin, who had formed the gang many years ago while serving a murder sentence in Illinois state prison. In order to disrupt the gang as much as possible, we gathered evidence for 18 months on over 40 defendants. I was lead counsel throughout the investigation, the securing of guilty pleas, and the pre-trial litigation stage, including responding to numerous pre-trial and suppression motions. I briefed and argued the motions, and put on testimony at the evidentiary hearings on the motions. When I was promoted to Chief of Appeals, the Office assigned two other prosecutors to try the remaining defendants (those prosecutors have since left the Office, and I briefed and argued the remaining sentencings). The case resulted in 43 convictions.

Co-counsel: Pravin Rao
now at: Perkins Coie
131 South Dearborn Street, Suite 1700
Chicago, IL 60603
(312) 324-8592

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00093 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.089

Jake Ryan
now at: Latham & Watkins
12636 High Bluff Drive
Suite 400
San Diego, CA 92130
(858) 523-3930

Opposing Counsel: The list below is of defense counsel for the defendants who proceeded to trial.

Donald Young for Troy Martin
20 North Clark Street
Suite 1725
Chicago, IL 60602
(312) 332-4034

Greg Mitchell for Eddie Bell
18141 Dixie Highway
Suite 111
Homewood, IL 60430
(708) 799-9325

James Graham for Patrick Bray
53 West Jackson Boulevard
Suite 703
Chicago, IL 60604
(312) 922-3777

Thomas C. Brandstrader for Harry Gilmore
53 West Jackson Boulevard
Suite 615
Chicago, IL 60604
(312) 332-5297

Jim Young for Mario Taylor
53 West Jackson Boulevard
Suite 820
Chicago, IL 60604
(312) 461-0374

Steven M. Levy for John Brayboy
266 Rutledge Street
Gary, IN 46404
(219) 882-1071

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00094 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.070

Beau Brindley for Jerome Terrell
53 West Jackson Boulevard
Suite 1001
Chicago, IL 60604
(312) 782-4615

4. *United States v. McLee*, 02 CR 635, Northern District of Illinois, U.S. District Judge Charles P. Kocoras, *aff'd*, 436 F.3d 751 (7th Cir. 2006) (Seventh Circuit Judges Kanne, Wood, and Sykes).

I was assigned as co-prosecutor to bring this nine-defendant cocaine conspiracy and gun case to trial, and we ultimately tried 3 defendants after the other defendants (except one fugitive) pled guilty. The cocaine conspiracy involved well over 100 kilograms of cocaine. During the two-week trial, I presented the testimony of numerous witnesses and delivered the government's closing argument. On appeal, I presented the oral argument in the Seventh Circuit. The court of appeals affirmed the convictions.

Co-counsel: Stuart Fullerton
U.S. Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
(312) 353-5266

Opposing counsel: The list below is of defense counsel for the defendants who proceeded to trial.

Nishay Sanan for Rodney McLee
327 South Plymouth Court
Suite 201
Chicago, IL 60604
(312) 692-0360

Kent Carlson for Vicki Murph-Jackson
53 West Jackson Blvd
Suite 1544
Chicago, IL 60604
(312) 663-9601

Bill Laws for Wanda Turner
134 North LaSalle Street
Suite 2210
Chicago, IL 60602
(312) 236-3925

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00095 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.071

5. *United States v. Henderson*, 04 CR 697, Northern District of Illinois, U.S. District Judge Robert W. Gettleman, 536 F.3d 776 (7th Cir. 2008) (Seventh Circuit Judges Manion, Rovner, and Sykes)

I briefed and argued this appeal in 2007, in which we appealed the district court's suppression of crack cocaine, firearms (including a machine gun), and an explosive found in the defendant's house. The appeal presented a Fourth Amendment question of first impression following the Supreme Court's 2006 decision in *Georgia v. Randolph*, which held that a co-occupant's consent to a search is invalid if a physically-present occupant objects to the search. In the Henderson case, the defendant objected to a search but was then removed from the house pursuant to a valid arrest for domestic battery – he had choked his wife and locked her out of the house – and the district court applied *Randolph* to suppress the evidence despite Mrs. Henderson's consent to search. In a published decision, a majority of the panel reversed the suppression order, holding that the defendant's removal from the scene permitted the officers to act on his wife's consent (and indeed, encouragement) to remove the guns and drugs from her home.

Opposing counsel: Imani Chiphe
Federal Defender Program
55 East Monroe
Suite 2800
Chicago, IL 60603
(312) 621-8349

6. *United States v. Miller*, 102 F. Supp.2d 946 (N.D. Ill. 2000), U.S. District Judge Elaine E. Bucklo

In this child exploitation case, the defendant believed he was chatting over the Internet with a 13-year old girl from the suburbs of Chicago, and he sent her child pornography and arranged to meet her for sex. The defendant traveled from his home state of Maryland to Illinois for the meeting. In fact, the defendant was caught in a sting operation in which an undercover agent was posing as the minor. The defendant had, before the sting investigation, already had sex with two underage minors in other states. I obtained the complaint, indictment, and plea agreement, and also presented the preliminary hearing and the detention hearing. More importantly, I successfully responded to the defendant's motion to dismiss, in which he argued that the federal law barring the use of computers to entice minors to engage in sex does not apply to sting operations. In a published decision, the district court adopted our position, and the opinion has been cited by several other federal courts. After losing the motion to dismiss, the defendant pled guilty in 2000.

Opposing counsel: Linda Amdur
53 West Jackson Blvd
Suite 1503
Chicago, IL 60604
(312) 347-9999

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00096 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.072

7. *United States v. Bonner*, 01 CR 670, Northern District of Illinois, U.S. District Judge William T. Hart

Along with another prosecutor, I brought this multi-scheme fraud case to trial in 2002. The defendants fraudulently obtained Social Security disability benefits and other government funds (such as federally-guaranteed student loans) in the total amount of around $470,000. We presented over 150 exhibits at the trial, and I presented around 15 trial witnesses and delivered the government's closing argument. Both defendants were convicted and sentenced to 6½ years of imprisonment.

Co-counsel: Stuart Chanen
now at: Valorem Law Group
35 East Wacker Drive, 30th Floor
Chicago, IL 60601
(312) 676-5480

Opposing counsel: James Fennerty for Maria Bonner
36 South Wabash Avenue
Suite 1310
Chicago, IL 60603
(312) 345-1704

Robert Edwards for Vernon Bonner
(deceased)

8. *United States v. Sherman*, 99 CR 194, Northern District of Illinois, U.S. District Judge Blanche M. Manning, *aff'd*, 268 F.3d 539 (7th Cir. 2001) (Seventh Circuit Judges Cudahy, Kanne, and Rovner)

I was assigned to prosecute this child pornography case after the indictment was returned. I obtained the plea agreement and presented the sentencing arguments, including advancing the position that the victims of child pornography possession, for purposes of the Sentencing Guidelines, were the children in the images, not just society at large. The district court agreed, and on appeal (which I also briefed and argued), the Seventh Circuit affirmed on that question of first impression in the Circuit.

Opposing counsel: Leonard C. Goodman
53 West Jackson Boulevard
Suite 1220
Chicago, IL 60604
(312) 986-1984

9. *United States v. Ceja*, 00 CR 75, Northern District of Illinois, U.S. District Judge John F. Grady, *aff'd*, 02-2316, 2003 WL 262063 (7th Cir. Feb. 6, 2003) (Seventh Circuit Judges Coffey, Easterbrook, and Kanne)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00097 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.073

Ceja conspired with two other defendants to import truck-loads of marijuana, over 4 tons worth in total, from Mexico. Ceja owned a Chicago furniture store, and used it as a front for the importation; the marijuana was hidden in furniture shipped from Mexico. I investigated and prosecuted the case from the controlled delivery of a truck-load by Customs agents, through the pleas of two defendants, and ending with the trial, conviction, and sentencing of Ceja. During the trial, I presented the opening statement, witnesses, and the rebuttal argument. Ceja received 15½ years' imprisonment. I briefed and argued the appeal, which resulted in affirmance of the conviction and sentence.

Co-counsel: Scott Lassar
now at: Sidley Austin
One South Dearborn
Chicago, IL 60603
(312) 853-7668

Opposing counsel: Andrea P. Taylor for trial
Office of Defender Services
One Columbus Circle, N.E., Suite G-430
Washington, D.C. 20544
(202) 502-2908

Edward Edens was hired after the trial
2238 Lisson Road
Naperville, IL 60565
(630) 983-0615

10. *United States v. Stephens*, 514 F.3d 703 (7th Cir. 2008) (Seventh Circuit Judges Posner, Kanne, and Rovner)

This was a government appeal of a district court's finding that two trial AUSAs committed a *Batson* violation by exercising peremptory challenges on the basis of race in trial of defendant's fraud charges. The jury convicted the defendant on all counts, but the verdict was overturned based on the peremptory-challenge finding. I was assigned to brief and argue the appeal, and I learned the extensive *voir dire* and juror-qualifications record. In a published decision, a majority of the panel reversed the *Batson* finding and reinstated the convictions, over the objection of one dissenter.

Opposing counsel: Barry Levenstam and Irina Dmitrieva
Jenner & Block
330 North Wabash Avenue
Chicago, IL 60611
(312) 222-9350

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00098 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.074

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As the Chief of Appeals, I supervise our Office's work before the Court of Appeals for the Seventh Circuit. I have supervised the brief-writing and oral argument of other prosecutors in more than 300 appeals. In addition, I maintain a case load that I handle personally. I advise the front office and other prosecutors on a wide variety of legal issues in the investigative and district-court stages of a case in order to increase the chances of success on appeal. This "consultation" function often involves the most complex and important cases that we bring, including complex fraud, terrorism, public corruption, and gang cases. As the person responsible for keeping prosecutors updated on developments in the law, I also disseminate descriptions of important cases to the entire criminal division. I draft form pleadings on recurring topics of all kinds. Finally, I help formulate Office policy on charging decisions, plea policies, and other Office-wide issues.

I am also responsible for dealing with district-court decisions that are adverse to the government, and that responsibility includes deciding whether to seek the approval of the Department to appeal an adverse decision. If we decide to seek authorization to appeal, I work with the line prosecutor to draft legal memoranda to the Department for review. I also review every sentence imposed that is more lenient than the Sentencing Guidelines range as part of our Office's efforts to maintain appropriate equality of sentencing treatment.

I have developed an expertise in civil rights litigation in Section 1983 and habeas cases, starting with my experience during the judicial clerkships, and continuing through private practice and my current position. I teach a civil rights litigation course at Northwestern University School of Law.

I have performed no lobbying activities on behalf of any client or organization.

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

Since fall 1996, I have taught Civil Rights Litigation at Northwestern University School of Law as an Adjunct Professor of Law. To date, I have taught the class during nine semesters over this period. The class focuses on the law of Section 1983 and habeas corpus – the two primary vehicles by which persons vindicate their constitutional rights against government entities and officials. The class meets for three hours per week, discussing not only the holdings of cases but also what practical impact the governing

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00099 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.075

legal principles have on how to litigate such cases, both from the perspective of the individual and the government. A syllabus from this past semester is supplied.

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

    None.

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

    I would hope to continue teaching Civil Rights Litigation at Northwestern University School of Law as an adjunct professor, as described above. I would do so only in compliance with the Code of Conduct for United States Judges.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service, if I am confirmed, would include former clients, former law-firm colleagues, or matters pending at Sidley Austin LLP, a law firm with which I was formerly associated, although the conflicts would likely be rare because I left the firm approximately 10 years ago.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00100 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.076

In addition, any criminal or civil matter that was pending in the U.S. Attorney's Office during my time of service could present a potential conflict of interest.

Additionally, because of my position as an adjunct professor at Northwestern University School of Law, in a case involving Northwestern University, I would disclose that relationship to the parties and act consistently with applicable laws and the Code of Conduct. Finally, I would recuse myself from any case in which a personal holding of corporate stock presents a financial conflict of interest under the Code of Conduct.

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

As an initial matter, I would follow any court-established automated procedure for screening potential conflicts of interest. In addition, I would personally and carefully examine each assigned case to determine the existence of a potential conflict. Ultimately, I will handle all matters involving actual or potential conflicts-of-interest through the careful and diligent application of the Code of Conduct for United States Judges, as well as other relevant Canons, statutory provisions, and case law.

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

From 1997 to 1998, I tutored low-income children from the Cabrini-Green area through a tutoring program called Partners in Education. Partners in Education was established at the Fourth Presbyterian Church on Michigan Avenue, and the students took a short bus ride each week to meet with us there for about an hour. We tried to teach reading, writing, and computer skills through the use of fun activities.

At Sidley & Austin, I represented a habeas petitioner in federal court. The petitioner had pled guilty to murder in the Circuit Court of Cook County, but alleged that the plea was not knowing because he had pled just two days after he tried to hang himself and because he was not alerted to the potential maximum punishment. I devoted at least 100 hours to interviewing the petitioner, reviewing the available records, researching the legal issues, and writing the petition. The district court denied the petition. After I left Sidley & Austin, another lawyer from the firm took over the case, and the Seventh Circuit vacated the denial for an evidentiary hearing. Ultimately, however, the petition was denied again.

Also at Sidley & Austin, I helped a partner draft an employee manual for a not-for-profit organization. The organization's mission was to provide counseling to individuals who wished to open small businesses in low-income neighborhoods in Chicago, particularly the south side of the city. I estimate that I spent at least 30 hours on the project.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00101 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.077

Finally, federal policies place certain limitations on outside legal representation while employed as an Assistant United States Attorney, and in order to avoid conflicts of interest and the appearance of conflicts, I have not represented outside clients while serving as an Assistant United States Attorney. I have continued, however, to donate uncompensated time to bar association, law school, and mentoring activities.

26. **Selection Process**:

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

In April 2009, Senator Richard J. Durbin established a merit Screening Committee to review applications and interview candidates for the three federal court vacancies in the Northern District of Illinois. After submitting an application, in June 2009 I interviewed with a sub-group of the Screening Committee, with Senator Durbin, and with the entire Screening Committee. In August 2009, Senator Durbin forwarded my name, along with others, to the White House for consideration for nomination by the President.

In November 2009, officials at the Department of Justice contacted me to begin the pre-nomination process. On February 16, 2010, I interviewed with officials of the Department of Justice and the White House Counsel's Office. The President submitted my nomination to the Senate on April 21, 2010.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00102 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.078

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

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
Chang, Edmond, E.	Northern District of Illinois	April 21, 2010

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 4/21/10 ___ Initial ___ Annual ___ Final	1/1/2009 to 4/13/2010

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.
Office of the U.S. Attorney 219 South Dearborn Street Chicago, IL 60604	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	Adjunct Professor of Law	Northwestern University School of Law
2		
3		

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

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	1997 - 2/5/2010	Continued participation in 401(k) plan of former law firm, Sidley Austin LLP (divested 2/5/2010)
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**		
☐	**NONE** (No reportable non-investment income.)		
1	2008-2009	Northwestern University School of Law – teaching (two terms in reporting period)	$ 6,000 (total)
			$
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		None	
2			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Edmond E. Chang	April 21, 2010

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; or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Edmond E. Chang	April 21, 2010

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

	A	B	C	D	E	F	G	H	I	J
	(Yr. filer rec'd income)	Type	Amount Code1 (A-H)	(Yr. for Col. C)	Value Code2 (J-P)	Method Code3 (Q-W)	Type	Date Month-Day	Value Code2 (J-P)	Gain Code1 (A-H)	Identity of buyer/seller (If private transaction)
☐	**NONE** (No reportable income,										
1	Motorola common stock	A	Dividend	J	T	Exempt					
2	Microsoft common stock	A	Dividend	J	T						
3	Hasbro common stock	A	Dividend	J	T						
4	E-Trade bank account 1	A	Interest	K	T						
5	E-Trade bank account 2	A	Interest	K	T						
6	Vanguard S&P500 Index Fund (mutual fund held as sole asset of IRA)		None	K	T						
7	Vanguard Windsor II Fund	A	Dividend	K	T						
8	Janus Twenty Fund		None	J	T						
9	American Century Ultra Fund	A	Dividend	J	T						
10	Oak Associates White Oak Fund		None	J	T						
11	T. Rowe Price Science&Tech Fund		None	J	T						
12	Janus Perkins MidCap Value Fund	A	Dividend	J	T						
13	Motorola 401(k)		None	M	T						
14	Sidley Austin 401(k)		None	J	T						
15	Bright Start Savings Plans (529 college)		None	K	T						
16	Chase bank account	A	Interest	J	T						
17											

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00105 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.081

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Edmond E. Chang	April 21, 2010

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

☐ **NONE** (No reportable income, assets, or transactions)									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00106 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.082

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Edmond E. Chang	April 21, 2010

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

A. Description of assets (including trust assets)	B. Gross value at end of reporting period (Code (J) or (K))	C. Gross income during reporting period (Code (L))	D. Value at beginning of reporting period (Code (J) or (K))	E. Type of transaction (Code (Q-W))	F. Date of transaction (Month, Day)	G. Value of transaction (Code (R))	H. Gain (Code (S))	I. Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Edmond E. Chang	April 21, 2010

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

						Transaction during reporting period			
	(1) Amount Code (A-H)	(2) Type (e.g., div., rent, int.)	(3) Amount Code (1-4)	(4) Value Method Code (E-W)	(5) Value Method Type	(6) Type (e.g., buy, sell, merger, redemption)	(7) Value Code (J-P)	(8) Gain Code (A-H)	(9) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
52									
53									
54									
55									
56									
57									
58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00108 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.084

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Edmond E. Chang	April 21, 2010

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

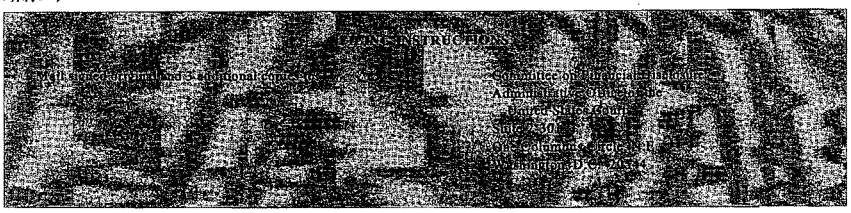
IX. CERTIFICATION.

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 Edmond E. Chang Date April 21, 2010

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.)



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		89	730	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		90	288	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	4	304	
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	222	749	
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		35	000				
Cash value-life insurance							
Other assets itemize:							
College funds (529 plans)		26	120				
TSP – federal government 401(k)		218	378				
Motorola – 401(k)		131	377	Total liabilities	227	053	
Upromise college fund			106	Net Worth	763	946	
Total Assets		990	999	Total liabilities and net worth	990	999	
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		
Hasbro	$ 8,716	
Microsoft	$ 5,581	
Motorola	$ 4,399	
American Century Ultra	$ 6,382	
Janus Perkins Mid-Cap Fund	$ 3,683	
Janus Twenty Fund	$ 6,893	
T. Rowe Price Science & Tech Fund	$ 2,262	
Vanguard S&P 500 Index IRA	$ 33,261	
Vanguard Windsor II Fund	$ 16,510	
White Oak Select Growth Fund	$ 2,601	
Total Listed Securities	$ 90,288	
Real Estate Owned		
Personal residence		$ 400,000
Real Estate Mortgages Payable		
Personal residence		$ 222,749

AFFIDAVIT

I, **EDMOND E-MIN CHANG**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 21, 2010
(DATE)

Edmond E. Chang
(NAME)

OFFICIAL SEAL
KASHAWNDA SLAUGHTER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:06/13/11

(NOTARY)

STATEMENT OF LESLIE E. KOBAYASHI, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

Judge KOBAYASHI. You have, and congratulations on doing that.

Senator DURBIN. Please proceed.

Judge KOBAYASHI. Thank you very much, Mr. Chairman, Ranking Member Senator Kyl. My deepest appreciation for scheduling this hearing. It's been a long road from Hawaii. So I appreciate it very much that you've scheduled this.

I'd also like to extend my deepest appreciation and gratitude to President Obama for this nomination and for the great privilege of being his first nominee from the district of Hawaii.

My sincere thanks, also, to Senators Inouye and Akaka. Great mahalo nui loa to them for their support and encouragement throughout this process.

If I may have your permission, Mr. Chairman, I'd like to introduce my family members. From Hawaii, my husband, Judge Clarence Pacarro. Our sons, Cody, age 11, and Luke, age 7.

Also, I'd like to recognize some friends that are here in the D.C. area, my good friend from college, Patricia Sulser and her husband, David. Our good family friends, Dr. Freddy Chen, Michelle Chen, and their children, Chelsea and Theodore.

Not with us physically today, but in spirit, back in Hawaii, our parents, my father and mother, Herbert and Ruth Kobayashi; my mother-in-law, Jean Pacarro; my sisters, Anne Miyashiro, her husband, Charlie, their son Travis; my sister, Robin Kobayashi, and her husband, Dr. Kenny Fink, and their children, Ellie and Jack.

Many family and friends that are supporting us through the Nation and in Hawaii, as well as my brothers-in-law, Rudy and Dij Pacarro, Bill and Penny Pacarro, and Randy and Norma Pacarro and their families.

And, of course, my court family, I'd like to very much thank my support staff, Star Quon (ph), Donna Odani (ph), and Warren Nakimora (ph), as well as all of the fellow judges in the district of Hawaii; our court clerk staff and the court clerk, the pretrial, probation, the U.S. Marshals, court security staff, and Federal defenders and U.S. attorneys, whose daily encouragement and support have been most meaningful.

Thank you.

Senator DURBIN. Thank you very much, Judge.

Ms. Casper.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00113 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Leslie Emi Kobayashi (legal name); Leslie Pacarro (married name)

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

   United States District Judge for the District of Hawaii.

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

   Office: United States District Court
   300 Ala Moana Blvd., Room C-353
   Honolulu, Hawaii 96850

   Residence: Kailua, Hawaii

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

   1957; Mount Holly, New Jersey

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

   1979-1983, Boston College School of Law; J.D., 1983

   1982-1983, University of Hawaii, William S. Richardson School of Law; no degree

   1977-1979, Wellesley College, B.A., 1979

   1975-1977, University of Hawaii at Manoa, no degree

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

66720.089

1999-Present
United States District Court for the District of Hawaii
300 Ala Moana Blvd, Room C-353
Honolulu, Hawaii 96850
United States Magistrate Judge

2000, 2001
William S. Richardson School of Law, University of Hawaii at Manoa
2525 Dole Street
Honolulu, Hawaii 96822
Adjunct Professor

1984-1999
Fujiyama, Duffy & Fujiyama
2700 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Partner (1991-1999)
Associate (1984-1991)

1983-1984
Office of the Prosecuting Attorney, City and County of Honolulu
1164 Bishop Street
Honolulu, Hawaii 96813
Deputy Prosecuting Attorney

Other Affiliations (uncompensated)

2007-2008
Hahaione School, Parent Teacher and Student Association
595 Pepeekeo Street
Honolulu, Hawaii 96825
Secretary and Board Member (2007-2008)

1999-2001
Volunteer Legal Services of Hawaii
545 Queen Street, Suite 100
Honolulu, Hawaii 96813-6206
Board Member

1996-1998
Friends of Judicial History Center
417 S. King Street
Honolulu, Hawaii 96813
Board Member

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00115 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.090

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

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

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

   Outstanding Volunteer Award, Hawaii State Bar Association (1999)

   Outstanding Adjunct Professor Award, William S. Richardson School of Law, University of Hawaii (2001)

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

   American Bar Association
   American Inn of Court IV (Aloha Inn)
   Barrister (1989-1991)
   Bencher (1996-2005)
   American Judicature Society
   Judicial Independence and Accountability Committee (2007-2008)
   Judicial Selection, Retention and Accountability Standing Committee (2009)
   Federal Magistrate Judges Association (1999-present)
   First Circuit Court, State of Hawaii Court-Annexed Arbitration Program
   Volunteer Arbitrator (1992-1999)
   Hawaii Medical Association
   Committee on Courtesy Agreement between Physicians and Attorneys (1990-1997)
   Hawaii State Bar Association
   Committee on Hawaii Rules of Evidence (1991-1992)
   Subcommittee on Judicial Administration, (1995-1996) Co-Chairperson (1996-1998)
   Bench/Bar Conference, Chairperson (1997, 1998)
   Joint Judiciary-Bar Professionalism and Ethics Committee (2000-2002)
   Magistrate Judges Executive Committee for the Ninth Circuit (2006-2008)
   Vice-Chair (2007-2008)
   National Asian and Pacific American Bar Association
   National Asian Pacific American Law Student Association
   Ninth Circuit ADR Committee (2010)
   Ninth Circuit Conference Executive Committee (2008-2011)
   Phi Delta Phi International Legal Fraternity, Student member (1982-1983)
   Volunteer Legal Services of Hawaii (formerly, Hawaii Lawyers Care)
   Volunteer Lawyer (1992-1999)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00116 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.091

10. **Bar and Court Admission**:

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

Hawaii, 1983

There has been no lapse in membership.

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

United States Court of Appeals for the Ninth Circuit, 1995
United States District Court for the District of Hawaii, 1983
Courts of the State of Hawaii, 1983

There has been no lapse in any membership.

11. **Memberships**:

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

AYSO Kailua, parent member (2005-present)
Bishop Museum (2006-present)
Hahaione School Parent Teacher and Student Association (2004-present)
Secretary & Board Member (2007-2008)
Fun Fair sub-committee co-chair (2005, 2006)
Fun Run, Chair (2008, 2009)
Make A Difference Day, Chair (2008)
Teachers Appreciation Lunch, Chair (2008)
Hawaii Medical Association, committee member (1990 - 1997)
Hawaii Public Radio (1999-present)
Hawaii Public Television (1999-2005)
Honolulu Academy of Arts (2000-present)
Honolulu Zoo Society (1999-present)
Judiciary History Center of Hawaii (1995-2000)
Board Member (1996-1998)
Jazzercise Hawaii (2007-present)
Kailua Basketball Association, parent member (2005-present)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00117 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.092

Ninth Circuit Judicial Historical Society (2003-present)
Oahu Country Club, member spouse (2005-present)
Olomana Community Association (1991-present)
Chair, Christmas Parade (2002-present)
Suzuki Talent Education of Hawaii (2003-present)
Wellesley College Alumnae Association (1979-present)
Wellesley College, Class of 1979, Class officer (2009-2012)
Wellesley College Alumnae Association, Hawaii Chapter (1979-present)
Windward YMCA (2005-present)

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

I am a graduate of Wellesley College and currently serve as a class officer for the Class of 1979. Wellesley is a women's college and admits and graduates women only. I am a member of Oahu Country Club which was established over 100 years ago. It had a men-only membership practice until the 1970's when that policy was changed. In the past 35 years, it has admitted women members. Otherwise, I am not, nor have I ever been, a member of any organization that discriminates on the basis of race, sex, religion, or national origin.

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

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

"In Memoriam Note: Gayle Yoshida," HAWAII B.J. (Sept. 2001)

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

Report of the Special Committee on Judicial Independence and Accountability to the Board of Directors of the Hawaii Chapter for the American Judicature Society, March 25, 2008. Copy supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00118 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.093

"Celebrating Pro Bono: Volunteer Legal Services of Hawaii's 2001 Pro Bono Summit," Hawaii Bar Journal (Dec. 2001). Copy supplied.

"Hawaii State Bar Association 1998 Annual Report: Standing Committees' Judicial Administration Committee," Hawaii Bar Journal (May 1999). Copy supplied.

Hawaii Bar Association 1997 Annual Report: Standing Committees: Judicial Administration Committee, Hawaii Bar Journal (May 1998). Copy supplied.

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

Testimony in support of David Z. Arakawa to serve as the corporation counsel of the City and County of Honolulu. I have no notes, recording or transcript. Reference is available at http://www.co.honolulu.hi.us/refs/bill/status/1997/r18.htm (last visited Apr. 21, 2010).

Testimony in support of a resolution to retain the services of a private attorney, as special counsel, to represent Will R. Cluney in a criminal case. I have no notes, recording or transcript. Record of the resolution is available at http://www.co.honolulu.hi.us/refs/bill/status/1995/r362.htm (last visited Apr. 21, 2010).

Letter in support of Mark Recktenwald's judicial nomination to serve as associate justice for the Hawaii Supreme Court. Copy supplied.

Letter in support of Craig T. Nakamura's judicial nomination to serve as chief judge of the Intermediate Court of Appeals for the State of Hawaii. Copy supplied.

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

I have made it my practice to speak frequently at continuing legal education and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00119 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.094

other bar association programs, especially since my appointment as a magistrate judge in 1999. I have identified the following presentations that I have made, although there may be others for which I have been unable to locate a record:

Continuing Legal Education Presentation on Amendments to the Federal Rules of Civil Procedure and Federal Rules of Evidence, Hawaii State Bar Association, Honolulu, Hawaii held on November 2, 2000. Outline and notes for the presentation are supplied.

Remarks to the Hawaii Chapter, Federal Bar Association, November 6, 2000. Notes from the informal talk are supplied.

Brown Bag Seminar for Court Staff regarding recent amendments to the Federal Rules of Evidence, November 16, 2000. Notes from the informal talk are supplied.

Continuing Legal Education presentation on federal motions practice, Hawaii State Bar Association, Honolulu, Hawaii, December 1, 2000. Written material is supplied.

ALI-ABA presentation on federal practice, Honolulu, Hawaii, February 28, 2001. I have no notes, recordings or transcripts.

Award presenter, Tenth Annual VLSH Niu Awards, June 22, 2001. I have no notes, recordings or transcripts.

Continuing Legal Education presentation on mediation and alternative dispute resolution, Hawaii State Bar Association, Honolulu, Hawaii, September 27, 2001. I have no notes, recordings or transcripts.

Remarks to recently admitted lawyers at the Hawaii State Bar Association, Mandatory Course on Professionalism, November 2001. I have no notes, recordings or transcripts.

Federal Court Procedures, Young Lawyers Division of the Hawaii State Bar Association, 2002. I have no notes, recordings or transcripts.

Continuing Legal Education presentation on employment practices and expert witnesses, Hawaii State Bar Association, Honolulu, Hawaii, October 7, 2002. I have no notes, recordings or transcripts.

Moderator, "Hot Topics in Litigation" Panel, Hawaii State Bar Association Annual Convention, Oct. 17, 2002. I also sat on panels discussing expert witnesses, employment law practice tips, and attorneys' fees at the same event. I have no notes, recordings or transcripts.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00120 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.095

Remarks to newly admitted lawyers at the Hawaii State Bar Association, Mandatory Course on Professionalism regarding the importance for lawyers to do pro bono work, November 16, 2002. I have no notes, recordings or transcripts.

Trial Academy, Hawaii State Bar Association, William S. Richardson School of Law, 2004 & 2005. I have no notes, recordings or transcripts.

Hawaii Women Lawyers, Annual Awards Reception, Introduction of Thalia Murphy, Esq., Hawaii Women Lawyers' Outstanding Woman Lawyer of the Year, 2005. A copy of the speech is supplied.

Continuing Legal Education presentation on federal practice for Hawaii State Bar Association's Nuts and Bolts seminar, Honolulu, Hawaii, 2005, 2006, February 7, 2007. Copy of the outline for the presentation and draft of the PowerPoint slides are supplied.

Continuing Legal Education presentation on trial skills, Hawaii State Bar Association, Honolulu, Hawaii, 2004, 2005. I have no notes, recordings or transcripts.

12th Annual Sidebar Program, American Judicature Society, Hawaii Chapter, July 29, 2004. I have no notes, recordings or transcripts.

13th Annual Sidebar Program, American Judicature Society, Hawaii Chapter, Aug. 4, 2005. I have no notes, recordings or transcripts.

Special court session to commemorate the passing of Lori Okenko Cuomo, a member of the Clerk's Office, 2005. Copy is supplied.

Continuing Legal Education presentation, "E-Discovery in Practice: Mock Deposition of 30(b)(6) Electronic Discovery Custodian," American Bar Association Annual Meeting, Honolulu, Hawaii, August 5, 2006. I have no notes, recordings or transcripts. Materials for the presentation are available at http://www.abanet.org/litigation/prog_materials/2006_aba.html (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Preparing Clients for Mediation," American Bar Association Annual Meeting, Honolulu, Hawaii, August 6, 2006. I have no notes, recordings or transcripts. A description of the panel discussion can be found at http://www.abanet.org/litigation/committees/businesstorts/docs/minutes080606.pdf (last visited Apr. 21, 2010). The online program book for this program is available at new.abanet.org/annual/pastevents/2006/cle_program_book.pdf (last visited Apr. 21, 2010).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00121 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.096

Continuing Legal Education presentation, "Successful Strategies to Achieve Diversity in Your Organization," American Bar Association Annual Meeting, Honolulu, Hawaii, August 6, 2006. I have no notes, recordings or transcripts. The program is described at http://www.abanet.org/litigation/committees/newsletter_gratis/business_torts_journal.pdf (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Plenary Session: Putting Your Best Case Forward," American Bar Association Annual Meeting, Honolulu, Hawaii, August 7, 2006. I have no notes, recordings or transcripts. Materials are available at http://www.abanet.org/labor/lel-aba-annual/papers/2006/2006.shtml (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Private Employment & Labor Law Issues and Litigation Workshop," Hawaii State Bar Association Seminar, October 26, 2007. I have no notes, recordings or transcripts. Audio is available through the Hawaii Bar Association at http://www.hsba.org/resources/1/CLE%20Flyers/Pub%20%20list%20December%209,%202009.pdf (last visited Apr. 21, 2010).

Brown Bag Session entitled "Practical Tips to Make Life Simpler," MAMA Honolulu, February 4, 2008. I have no notes, recordings or transcripts. The event was reported by Nancy Arcayna, "Help me, MAMA!" HONOLULU STAR-BULLETIN, Feb. 25, 2008 (copy supplied).

Continuing Legal Education presentation to judges on electronic discovery and protective orders, Ninth Circuit Conference, Honolulu, Hawaii, July 17, 2008. Copy of outline is supplied.

Presenter, General Session III, Medical, Competency and Transportation Issues, Pretrial and Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008. No notes or transcripts are available. An outline of the program, and notes of planning meetings dated May 12 and July 15, 2008 are supplied.

Moderator, General Session VI, the Risk of Cognitive Error in Decisions about Pretrial Detention and Misdemeanor Sentencing, Pretrial and Misdemeanor Sentencing Institute, San Diego, California, November 7, 2008. No notes or transcripts are available. An outline of the program is supplied.

Presenter, Aina Haina Public Library Health Fair, Honolulu, Hawaii, November 15, 2008. No notes or transcripts are available.

Native American Law Students Association's National Moot Court Competition, William S. Richardson Law School, University of Hawaii Moot Court Team preparation, April 2009. I have no notes, recordings or transcripts. Copy of William S. Richardson law School Alumni Newsletter, May 1, 2009 is supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00122 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.097

Continuing Legal Education presentation on electronic discovery for lawyers at the American Conference Institute, Boston, Massachusetts, June 24, 2009. No notes or transcript are available. An announcement for the event is available at http://www.crowell.com/documents/Aviation%20Litigation%202009%20-%20Draft%20Agenda%202-18.pdf (last visited Apr. 21, 2010).

Speech at the Admission to the Bar Ceremony, Honolulu, Hawaii, November 9, 2009. I have no notes, recordings or transcripts.

Remarks about federal court practice and given to pre-litigation skills class, William S. Richardson School of Law, University of Hawaii, October 19, 2009. Copy supplied.

Remarks given at the hearing on applications to become naturalized American citizens, 1999-2009. Copy supplied.

2009 Ninth Circuit Judicial Conference, Opening Program introduction for "Conversation with President Abraham Lincoln and General Ulysses S. Grant", Monterey, California, July 20, 2009. I have no notes, recordings or transcripts. An announcement for the event is available at http://www.ce9.uscourts.gov/jc2009/promo/speakers.html (last visited Apr. 21, 2010).

2010 District Conference for the District of Hawaii, Introduction of Dinner Speaker, David Lat on April 8, 2010. Copy supplied.

Moderator, Panel on the District of Hawaii's Re-Entry Court Pilot Program, April 9, 2010. I have no notes, recordings or transcripts. A copy of the Conference Program with a description of the Re-Entry Court program is supplied.

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

I have searched my files and numerous electronic databases in an effort to locate each time I have spoken on the record to a reporter. It has not been my practice to give interviews on a regular basis, but it is possible others exist that I have not been able to locate.

Linda McCrerey, "Win-win Partners: Partnering Is a New Approach to an Old Concept of Problem Solving Outside the Courtroom," HAWAII BUSINESS, Sept. 1996

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00123 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.098

Peter Wagner, "Ala Moana Balks Over Liberty House Rescue Terms," HONOLULU STAR-BULLETIN, Apr. 2, 1998

Peter Wagner, "Liberty House Has 'Sweet' Deal on Rent," HONOLULU STAR-BULLETIN, Apr. 9, 1998

Linda Dela Cruz, "From the Hui Back Home," MIDWEEK, Oct. 12, 2005

"2006 Olomana Christmas Parade," MIDWEEK, Dec. 27, 2006

Elizabeth Kent, "From the Bench: Judge Leslie Kobayashi," 13 HAWAII B.J. 12 (2009)

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

On August 2, 1999, I was appointed as a United States Magistrate Judge for the District of Hawaii. I was re-appointed to the same position in 2007. My term of appointment expires on August 2, 2015. As a judicial officer of the district court, I exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges including misdemeanor criminal and traffic matters, pretrial felony criminal proceedings, and pretrial motions and matters (such as discovery and settlement conferences), as well as jury and non-jury trials (if the parties consent to jurisdiction) in civil cases.

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

I have presided over approximately 25 trials to verdict or judgment (civil jury and non-jury as well as criminal jury and non-jury misdemeanor cases punishable by up to one year of incarceration. In addition, I have presided over approximately 70 non-jury trials in traffic and petty misdemeanor cases.

i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	92%
criminal proceedings:	8%

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

See attached list of cases.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00124 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.089

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Flowers v. Sause Bros., Inc.*, Civ. No. 02-00149 LEK; affirmed on appeal, 167 Fed. Appx. 689 (9th Cir. 2006). Case Description: Plaintiff James Flowers was a seaman who worked for Defendant Sause Brothers, Inc. He was injured while at sea and on a barge operated by Sause Brothers. Mr. Flowers contended that Sause Brothers improperly required him to retrieve the slack from a rope that was used to secure the barge and, as a result, he suffered a personal injury.

   I found that Sause Brothers provided Mr. Flowers with a safe work environment and that the barge was seaworthy; specifically that the procedure that Sause Brothers used in retrieving the slack from the rope was a customary and safe procedure to use.

   Counsel for Plaintiff was Preston Easley, Jr., Law Firm of Preston Easley, Jr., 2500 Via Cabrillo Marina, Suite 106, San Pedro, CA 90731-7724, Tel 301-832-5315. Counsel for Defendant was Robert Frame, Frame & Nakano, Four Waterfront Plaza, Suite 575, 500 Ala Moana Boulevard, Honolulu, HI 96813, Tel 808-545-3043.

2. *Carter v. University of Hawaii*, Civ. No. 01-00517 LEK. Plaintiff Gregory Lee Carter had applied for a position as an instructor in Hawaiian language with the University of Hawaii. He was not hired for the position and another applicant, who was female and of Hawaiian descent, was hired. Mr. Carter alleged that he was the most qualified candidate, that the university discriminated against him on the basis of his gender and race, and that the university was impermissibly biased on their hiring by giving preference to the candidate who was female and non-Caucasian.

   The jury found that the university did not discriminate against Mr. Carter.

   Plaintiff was pro se. Counsel for Defendant was Ryan Akamine, University General Counsel's Office, 2444 Dole Street, Bachman Hall 110, Honolulu, HI 96822-2246, Tel 808-956-2211.

3. *Jane Mother v. State of Hawaii,* Civ. No. 00-00446 LEK; affirmed on appeal, 283 Fed. Appx. 514 (9th Cir. 2008). Plaintiff Jane Mother filed an action on behalf of her son who attended public elementary school and had been determined to qualify for special education needs. She claimed that the school failed to follow their obligations under the Americans with Disabilities Act and the Rehabilitation Act, and failed to provide her son

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00125 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.100

with an appropriate education plan, and retaliated against her for challenging this plan by reporting her to social services authorities and filing a petition that questioned whether the mother was endangering the child's welfare.

I granted Defendant State of Hawaii's Fed. R. Civ. P. 52(d) motion and directed judgment in its favor on the grounds that the school established that it had a legitimate, non-retaliatory reason for reporting the mother to social services authorities and filing the petition.

Counsel for Plaintiff was Carl Varady, American Savings Bank Tower, 1001 Bishop Street, Suite 2870, Honolulu, HI 96813, Tel 808-523-8447. Counsel for Defendant were Cindy S. Inouye, Holly T. Shikada, & Nancy Albano, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255.

4. *Toro v. United S*tates, Civ. No. 03-00030 LEK; affirmed on appeal, 284 Fed. Appx. 514 (9th Cir. 2008). This case involved claims by Plaintiff Nidia I. Toro that Army physicians had committed medical malpractice by failing to diagnose traumatic brain injury in a timely manner and failed to obtain her informed consent to surgery. As a result, Plaintiff contended that she was denied proper treatment and care, and developed post-traumatic stress disorder. The Army contended that Ms. Toro's claims were barred by the *Feres* doctrine and the statute of limitations.

I rejected the Army's argument that the *Feres* doctrine and the statute of limitations barred Ms. Toro's entire claims. I found that the *Feres* doctrine did bar her medical negligence claims for organic brain injury during the time that she was injured from activities that were incidental to her military service, both on active duty and in the Army Reserves but did not bar her claims as to injuries that occurred after her discharge from the Army Reserves.

The outcome of the case was that I found that the Army's physicians did not breach the standard of care and that the surgery was done after first obtaining her informed consent.

Counsel for Plaintiff were Joseph J. Mellon, Shugart Thomson & Kilroy, 1050, 17th Street, Suite 2300, Denver, Colorado 80265, Tel 303-572-9300 and William Copulos, Copulos Fisher & Roylo, American Savings Bank Tower, 1001 Bishop Street, Suite 1510, Honolulu, HI 96813, Tel 808-536-0500. Counsel for Defendant was Thomas A. Helper, U.S. Attorney's Office, 300 Ala Moana Blvd; Suite 6100, Honolulu, HI 96850, Tel 808-541-2850.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00126 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.101

5. *Leaeno v. Pistor, et al,* Civ. No. 05-00781. Plaintiffs are part of an extended family that lives together in a house. Plaintiff Jerry Leaeno is the son of Plaintiffs Suevale Leaeno and Faauila Leaeno. Jerry Leaeno was arrested in Suevale and Fauuila's house by police officers. The plaintiffs alleged that their civil rights were violated by the police officers' entry into and search of the house without first obtaining a search warrant.

   Based on the jury's factual findings in the special jury verdict forms, I granted summary judgment and judgment as a matter of law in favor of the police officers and found that the police officers did not violate Suevale and Faauila's civil rights by walking to their entry door without consent, and that Faauila gave consent to have the police officers enter the house to search for Jerry.

   Counsel for Plaintiff were Rory S. Toomey, 1164 Bishop Street, Suite 1501, Honolulu, HI 96813, Tel 808-533-7161 and Scott S. Brower, 1088 Bishop Street, Suite 803, Honolulu, HI 96813, 808-522-0053. Counsel for Defendant were Kate S. Matzger, Kyle K. Chang, & Marie Gavigan, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

6. *Obrey v. England,* Civ. No. 02-00033 LEK. Plaintiff Ronald Obrey is a project superintendent at the Pearl Harbor Naval Shipyard and had applied for a promotion at work. Mr. Obrey was not promoted and alleged that the Navy discriminated against him on the basis of his race and national origin when another candidate was promoted. In one of his motions in limine, Mr. Obrey sought to admit statistical evidence of the race and national origins of senior managers hired at Naval Shipyards.

   I granted the motion and ruled that statistical data is relevant and the methodology used to interpret the data was subject to cross-examination. The outcome of the case is that the jury found that the Navy had not discriminated against Mr. Obrey.

   Counsel for Plaintiff were Clayton C. Ikei & Jerry Chang, Office of Clayton Ikei, 1440 Kapiolani Blvd., Suite 1203, Honolulu, HI 96814, Tel 808-533-3777. Counsel for Defendant were Edric Ching & Thomas A. Helper, U.S. Attorney's Office, 300 Ala Moana Blvd., Suite 6100, Honolulu, HI 96850, Tel 808-541-2850.

7. *Kanae v. Hodson*, Civ. No. 02-00399 LEK. Plaintiff and another person had stopped an automobile at gunpoint and forced the elderly couple driving the automobile to take them as passengers. When the automobile was stopped by the police, Plaintiff attempted to exit the automobile and was shot. He sued the police officer for using deadly force in a manner

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00127 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.102

that consciously disregarded existing law on the use of deadly force and violated Plaintiff's civil rights.

The jury found that Plaintiff's civil rights had been violated.

Counsel for Plaintiff were Eric A. Seitz & Lawrence I. Kawasaki, 20 Mililani Street, Suite 714, Honolulu, HI 96813, Tel 808-533-7434. Counsel for Defendant were Harry Freitas & Joseph Kamelamela, Office of Corporation Counsel, Hilo Lagoon Centre, 101 Aupuni Street, Suite 325, Hilo, HI 96720, Tel 808-961-8251.

8. *Rivers v. City and County of Honolulu*, Civ. No. 08-00508 LEK. Plaintiff Alan Rivers is a police officer who sued his employer for retaliating against him because he made a report of sexual harassment by a fellow officer.

The jury found that the police department did not retaliate against Mr. Rivers.

Counsel for Plaintiff was Venetia Carpenter Asui, 820 Mililani St., Suite 812, Honolulu, HI 96813, Tel 808-523-6446. Counsel for Defendant was Tracy Fukui, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

9. *Alhofen v. Monteilh*, Civ. No. 01-00660 LEK; affirmed on appeal, 118 Fed. Appx. 170 (9th Cir. 2004). Plaintiff Michael Alhofen was a suspect in a terroristic threatening case. Defendant Gene Monteilh was a police officer who arrested Mr. Alhofen. After trial testimony was concluded, I found that Officer Monteilh had conducted an objectively reasonable investigation before arresting Mr. Alhofen and therefore was entitled to qualified immunity.

Counsel for Plaintiff was Rory S. Toomey, 1164 Bishop Street, Suite 1501, Honolulu, HI 96813, Tel 808-533-7161. Counsel for Defendant were Carolyn Yu & Marie Maunele Gavigan, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

10. *Captain Andy's Sailing v. Johns, et al.*; Civ. No. 00-00051 LEK. Plaintiff Captain Andy's Sailing operated a commercial sailing business along with Na Pali Coast on the island of Kauai. The State of Hawaii instituted a fee that it instituted to recover the costs of regulating the Na Pali Coast ocean waters. Plaintiff challenged the constitutional permissibility of the fee. I found that the United States Constitution prohibits states from laying a "duty of tonnage" without the consent of Congress, and that this fee

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00128 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.103

assessed against Plaintiff's vessel was an impermissible tax in violation of the prohibition against tonnage duties.

Counsel for Plaintiff was Dennis Nile, Park Johnson Park & Niles, P.O. Box 870, Wailuku, HI 96793, Tel 808-242-6644. Counsel for Defendants were Edsel M. Yamada, Josephine L. Chang, Lane T. Ishida, Lynne M. Otaguro, & Michael Q.Y. Lau, Office of the Attorney General, State of Hawaii, Kekuanao'a Building, 465 S. King Street, Room 300, Honolulu, HI 96813, Tel 808-587-2985.

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

1. *Kamakana v. City of Honolulu*, Civ. No. 00-729, 2002 WL 32255355 (D. Haw. Nov. 25, 2002), aff'd, 447 F.3d 1172 (9th Cir. 2006)

Counsel for Intervenor were Jeffrey S. Portnoy, Peter W. Olson, & Elijah Yip, Cades Schutte, 1000 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-521-9221. Counsel for Defendant were Jerold T. Matayoshi & Lois H. Yamaguchi, Fukunaga, Matayoshi, Hershey & Ching, 841 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-533-4300.

2. *Surfvivor Media, Inc. v. Survivor Productions,* Civ. No. 01-00509 LEK, aff'd 406 F.3d 625 (9th Cir. 2005)

Counsel for Plaintiff was Paul Maki, Law Office of Paul Maki, 1100 Alakea Street, 23rd Floor, Honolulu, HI 96813, Tel 808-545-1122. Counsel for Defendant was John Komeiji, Hawaiian Telcom Inc., 1177 Bishop Street, Honolulu, HI 96813, Tel 808-546-7879.

3. *Matsuura v. E.I. du Pont De Nemours and Company*, Civ. No. 96-01180 SOM-LEK (consolidated cases), 2007 WL 30600 (D. Haw. January 4, 2007)

Counsel for Plaintiffs were A. Camden Lewis, Mary G. Lewis, & Thomas A. Pendarvis, Lewis Babcok & Hawkins, 1513 Hampton Street, PO Box 11208, Columbia, SC 29211, Tel 803-771-8000; Carl H. Osaki, 225 Queen Street, Suite17G, Honolulu, HI 96813, Tel 808-528-4666; David W. Moyer, John C. Hentschel, Peter N. Molligan, Scott J. Allen, & Stephen T. Cox, Cox & Moyer, 1000 Marina Village Parkway, Suite 120, Alameda, CA 94501-6457, Tel 510-522-1200; and Kris A. Laguire, 162 Kinoole Street, Suite 101, Hilo, HI 96720, Tel 808- 961-1082. Counsel for Defendant were Warren Price III, Kenneth Okamoto, Susan C. Wilson, Robert Marks, Terrance Yamamoto, 707 Richards Street, Suite 728,

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00129 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.104

Honolulu, HI 96813, Tel 808-538-1133; Eileen L. Tilghman, Paul T. Reid, Shook Hardy & Bacon, 201 South Biscayne Blvd., Suite 2400, Miami, FL 33131, Tel 305-358-5171; and Lisa W. Munger, Goodsill Anderson Quinn & Stifel, 1099 Alakea Street, Suite 1800, Honolulu, HI 96813, Tel 808-547-5600.

4. *American Savings Bank v. UBS Painewebber, et al.*, Civ. No. 01-00158 ER-LEK, 210 F.R.D. 721 (D. Haw. 2001)

   Counsel for Plaintiff were Paul Alston, David Nakashima, David M. Forman, Alston Hunt Floyd & Ing, American Savings Bank Tower, 1001 Bishop Street, Suite 1800, Honolulu, HI 96813, Tel 808-524-1800; Robert T. Sullwold, Sullwold & Hughes, 235 Montgomery Street, Suite 703, San Francisco, CA 94104, Tel 415-263-1850; and Nancye L. Bethurem, 6312 Valley View Road, Rogers, AR 72758, Tel 479-203-9985. Counsel for Defendant were Mark J. Bennett, Attorney General, State of Hawaii, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255; William C. McCorriston & Nadine Ando, McCorriston Miller Mukai MacKinnon, Five Waterfront Plaza, Suite 400, 500 Ala Moana Blvd., Honolulu, HI 96813, Tel 808-529-7300; and Roni R. Reed & David M. Jolley, Covington & Burling, One Front Street, San Francisco, CA 941111, Tel 415-591-6000.

5. *Untalan v Kapiolani Medical Center*, Civ. No. 99-00635 LEK, aff'd on appeal, 68 Fed. Appx. 781 (9th Cir. 2003), *cert denied*, 540 U.S. 1005 (2003)

   Counsel for Plaintiff were Ronald Fujiwara, 888 Mililani St., PH 2, Honolulu, HI 96813-2941, Tel 808-526-9887 and Barry W. Marr, Sarah O. Wang, Marr Jones & Wang, 1003 Bishop St., Suite 1500, Honolulu, HI 96813, Tel 808-536-6700.

6. *Christian v. Bissen*, Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, Christian v. White, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, Christian v. Frank, No. 08-17236, – F.3d – , 2010 WL 572735

   Counsel for Petitioner were Keith S. Shigetomi, 711 Kapiolani Blvd, Suite 1440, Honolulu, HI 96813, Tel 808-596-0880 and Mark Barrett, PO Box 896, Norman, Oklahoma 73070, Tel 405-366-8329. Counsel for Respondent were Davelynn M. Tengan, Peter A. Hanano, Benjamin M. Acob, Richard K. Minatoya, Dept. of the Prosecuting Attorney, County of Maui, 150 S. High Street, Wailuku, HI 96793, Tel 808-270-7777.

7. *Metzler Contracting Co., LLC v. Stephens*, Civ No. 07-00261 LEK, 2007 WL 1977732 (D. Haw. Jul. 3, 2007)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00130 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.105

Counsel for Plaintiff were Jerry M. Hiatt & David Harada-Stone, Law Office of Jerry Hiatt, 204 Parker Square, 65-1279 Kawaihae Road, Kamuela, HI 96743, Tel 808-885-3400. Counsel for Defendant were James McWhinnie, Anna Oshiro, Kenneth Kupchak, Damon Key Leong Kupchak Hastert, 1003 Bishop Street, Suite 1600, Honolulu, HI 96813, Tel 808-533-8031; and Melvin Miyagi, Watanabe & Ing, Suite 2300, 999 Bishop Street, Suite 2300, Honolulu, HI 96813, Tel 808-544-8300.

8. *Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate,* Civ. No. 08-00555 DAE-LEK, 2009 WL 855831 (D. Haw. Mar. 30, 2009)

Counsel for Plaintiff were Eric Grant, Hicks Thomas LLP, 8001 Folsom Blvd., Suite 100, Sacramento, CA 95826, Tel 916-388-0833; James Joseph Banks, Banks & Watson, 813 Sixth Street, Suite 400, Sacramento, CA 95814, Tel 916-325-100 x203; and Mark M. Murakami & Robert H. Thomas, Damon Key Leong Kupchak Hastert, 1003 Bishop Street, Suite 1600, Honolulu, HI 96813, Tel 808-533-8031. Counsel for Defendant were Charlene S. Shimada, Bingham McCutchen LLP, 3 Embarcadero Center, Suite 1800, San Francisco, CA 94111-4067, Tel 415-393-2000; and Paul Alston, Louise K. Y. Ing, & Clyde J. Wadsworth, Alston Hunt Floyd & Ing, American Savings Bank Tower, 1001 Bishop Street, Suite 1800, Honolulu, HI 96813, Tel 808-524-1800.

9. *Finazzo v. Hawaiian Airlines*, Civ. No. 05-00524 JMS/LEK, 2007 WL 954306 (D. Haw. Mar. 28, 2007), 2007 WL 1080095 (D. Haw. April 6, 2007), 2007 WL 1201694 (D. Haw. April 23, 2007), 2007 WL 1425241 (D. Haw. May 10, 2007), 2007 WL 2106187 (D. Haw. July 13, 2007), 2008 WL 678562 (D. Haw. Mar. 12, 2008)

Counsel for Plaintiff were Michael J. Green & Glen H. Uesugi, 345 Queen Street, 2nd Floor, Honolulu, HI 96813, Tel 808-521-3336; Brandee J. Faria & John F. Perkin, Perkin & Faria, 841 Bishop Street, Suite 2000, Honolulu, HI 96813, Tel 808-523-2300; and David Breskin & John E. Wallace, Short Cressman & Burgess, 999 Third Avenue, Suite 3000, Seattle, WA 98104-4088, Tel 206-682-3333. Counsel for Defendant were Lynne T. Toyofuku & Jan Boivin, Marr Jones & Wang LLP, Pauahi Tower, 1003 Bishop Street, Suite 1500, Honolulu, HI 96813, Tel 808-536-4900.

10. *Chapman v. Krutonog*, Civ. 08-00579 HG-LEK, 2009 WL 4798127 (D. Haw. Dec. 11, 2009)

Counsel for Plaintiff were Philip R. Brown, Effie Ann Steiger, 1003 Bishop Street, Suite 2005, Honolulu, HI 96813, 808-523-5900; and Martin Singer & Paul N. Sorrell, Lavely & Singer, 2049 Century Park East, Suite

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00131 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.106

2400, Los Angeles, CA 90067, Tel 310-556-3501. Counsel for Intervenor was Howard Glickstein, 345 Queen Street, 2nd Fl., Honolulu, HI 96813, Tel 808-521-3336. Counsel for Defendant were Evan R. Shirley, 1615 Davies Pacific Center, 841 Bishop Street, Honolulu, HI 96813, Tel 808-528-2875 and Michael A. Okazaki, 370 Kawaihae Street, Apt E, Honolulu, HI 96813, Tel 808-222-1859.

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

Untalan v Kapiolani Medical Center, Civ. No. 99-00635 LEK, affirmed on appeal, 68 Fed. Appx. 781 (9th Cir. 2003), *cert denied*, 540 US 1005 (2003)

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

United States v. Leonti, 326 F.3d 1111 (9th Cir. 2003), involved a 28 U.S.C. § 2255 petition, alleging ineffective assistance of counsel. I denied the motion without an evidentiary hearing. The Ninth Circuit reversed my denial and remanded for an evidentiary hearing as to whether the petitioner's attorney rendered ineffective assistance by delaying his guilty plea and failed to effectively assist him during the time he was cooperating with federal agents. This was a case of first impression for the Ninth Circuit as to whether a viable ineffective assistance of counsel claim can arise out of an attorney's failure to assist a defendant while awaiting sentencing in his efforts to provide cooperation to governmental agents.

In *MacDonald v. Kahikolu Ltd.*, 442 F.3d 1199 (9th Cir. 2006), the Ninth Circuit vacated my decision in a non-jury trial in favor of the defendant, and remanded for a new trial with instructions to determine whether the defendant's failure to comply with Coast Guard regulations played any part in producing the plaintiff's injuries. My amended decision, following the remand, can be found at *MacDonald v. Kahikolu Ltd.*, 2007 WL 4547552 (D. Haw. Dec. 26, 2007).

In *Christian v. Bissen*, Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, *Christian v. White*, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, *Christian v. Frank*, No. 08-17236, – F.3d – , 2010 WL 572735, the Ninth Circuit reversed the district judge's adoption of my recommendation to grant the petitioner's habeas petition for a new criminal trial.

As a magistrate judge, there are hundreds of cases in which I have filed a findings and recommendation to the district judge. Although my findings and recommendations are largely affirmed, there are occasions where the findings and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00132 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.107

recommendations have been vacated, reversed or modified by the district judge. These rulings are located in the court's electronic filings for each of the cases. I have conducted a Westlaw search to locate any decisions that vacate, reverse or modify my findings and recommendations or other rulings that have been appealed to a district judge. This search resulted in locating 426 documents and I have provided the descriptions and Westlaw citations for those decisions that have vacated, reversed or modified my findings and recommendations, or other rulings that I have made and that have been appealed to a district judge.

1. In *Christian v. Bissen*, 2007 WL 461303 (D. Haw. Feb. 6, 2007), the district judge vacated my order granting discovery to a habeas petitioner and remanded the matter for me to determine whether the claims have been exhausted. The district judge vacated my order because it ruled that I should have first made a finding as to whether the petition involved any unexhausted claims before deciding whether discovery should be permitted.

   I subsequently issued an order granting the petitioner's motion for leave to conduct discovery and findings and recommendation regarding petition for habeas corpus which can be found at 2007 WL 1494422 (D. Haw. Feb. 6, 2007). The respondents appealed and the district judge affirmed my decision concerning counts three and seven, vacated the decision regarding count eight, affirmed as to the granting of discovery and confirmed the recommendation that an evidentiary hearing should be held following discovery. This order can be found at 2007 WL 2712923 (D. Haw. Sept. 12, 2007). An evidentiary hearing was held. I issued my findings and recommendation to grant in part and deny in part petition for writ of habeas corpus which is reported at 2008 WL 4055817 (D. Haw. Aug. 29, 2008). The district court adopted the findings and recommendation to allow petitioner to choose between dismissal of the entire petition or amending petition to delete the two unexhausted claims, 2008 WL 4369330 (D. Haw. Sept. 25, 2008), and adopted in part and modified in part my findings and recommendations to grant in part and deny in part the petition for writ of habeas corpus, and to deny the objections to my findings and recommendation and is found at 2008 WL 4483766 (D. Haw. Sept. 30, 2008). The district judge modified my findings and recommendation to deny as to count three to include that the denial was also based on petitioner failure to demonstrate that his counsel's assistance fell below the objective standard of reasonableness or caused prejudice. On appeal, the Ninth Circuit reversed and this decision can be found at *Christian v. Frank, No. 08-17236,* B F.3d B , 2010 WL 572735 (9th Cir. Feb. 19, 2010).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00133 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.108

2. In *Kitazato v. Black Diamond Hospitality Investments, LLC*, 2009 WL 3824851 (D. Haw. Nov. 13, 2009), the district judge adopted in part and modified in part my findings and recommendation to grant Plaintiff's motion to remand to state court, and granted in part and denied in part removing Defendants' Objection to my findings and recommendations. Specifically, the district judge modified my findings and recommendation only with respect to the award of attorneys' fees, which he felt was unwarranted.

3. In *Rossetto v. Oaktree Capital Management, LLC*, 664 F.Supp. 1122 (D.Haw. 2009), the district judge adopted, as modified, my findings and recommendation, and stated that he reached the same conclusions as I had, but with a different analysis. The district judge agreed that it was true that Defendants had independent knowledge that Plaintiff was a member of a union, or that a collective bargaining agreement existed governing the payment of service charges but that information was not included in the Complaint which the district judge felt was the only relevant question.

4. In *re Oliver*, 2009 WL 2851830 (D. Haw. Aug. 26 2009), the district judge adopted in part and reject in part my findings and recommendation. Specifically, the district judge rejected my findings and recommendation to the extent that it suggests that Eric Lighter, one of the two petitioners, had joined the other petitioner, Mahealani V. Oliver, in filing the letter that I had construed as a petition for relief, and otherwise adopted my findings and recommendations in all other respects.

5. In *Na Pali Haweo Community Ass'n v. Grande*, 252 FRD 672 (D. Haw. 2008), the district judge partially vacated a prior order in which I had granted Defendants' motion to set aside default but had awarded Plaintiff fees and costs incurred in defending the motion. The district judge remanded the sanctions to me for a hearing on the sanctions issue. In the subsequent appeal of my ruling following that hearing, he granted the appeal and dismissed the sanctions award as being overly harsh.

6. In *United States v. Gaitan-Ayala,* 2008 WL 1752678 (D. Haw. April 17, 2008), the district judge granted an appeal of my order finding that the attorney representing Defendant had no actual or potential conflict. The district judge disqualified the defense attorney from representing Defendant and found that, under the clearly erroneous standard, there was a serious potential conflict of interest.

7. In *International Longshore & Warehouse Union, Local 142 v. C. Brewer*, 2007 WL 2300716 (D. Haw. July 30, 2007), the district judge reversed and remanded my order denying leave to file an amended complaint, and found that my finding that Plaintiffs failed to satisfy the good cause requirement of Fed. R. Civ. P. 16(b) was clearly erroneous and contrary to law, and remanded for consideration as to whether the amendment as proper under Fed. R. Civ. P. 15(a).

8. In *Berry v. Hawaii Exp. Service, Inc.*, 2007 WL 689474 (D.Haw. March 2, 2007), the district judge adopted and modified my findings and recommendation regarding an award of attorney's fees and costs. The district judge modified my recommendation to the extent that she increased the deduction for block billing, lowered the hourly rate for one of the paralegals from $80 to $70, and replaced my fifteen percent allocation with a twelve percent allocation of fees incurred in connection with Count IV.

9. In *Elizares v. Parker*, 2007 WL 2048832 (D. Haw. Jul. 12, 2007), the district judge adopted my amended findings and recommendations but modified my findings with certain stylistic changes.

10. In *Matsuura v. E.I. du Pont De Nemours and Co.*, 2006 WL 2734291 (D. Haw. Sept. 22, 2006), the district court affirmed in part and reversed in part regarding numerous motions in limine that I had ruled upon. The district judge reversed my ruling that post-1994 settlements were barred by Rule 408 of the Federal Rules of Civil Procedure, and that evidence of post-1994 settlements and verdicts was barred by Rule 403 of the Federal Rules of Civil Procedure and found that these rulings were contrary to law. The district judge affirmed most of my rulings as to the testimony of J. Anderson Berly, expert witness, except as to my ruling precluding his opinion based on the post-1994 settlements and verdicts which the district judge reversed. The district judge affirmed most of my rulings as to the testimony of James Venture, expert witness, except as to my ruling precluding his opinion about the settlement value of Plaintiffs' cases on the date of the settlements which the district judge reversed. The district judge similarly reversed my rulings as to Richard Constand and Thomas Ueno, both economic expert witnesses.

11. In *Opuna, LLC v. Sabbagh*, 2006 WL 2374750 (Aug. 15, 2006), the district judge vacated my order granting Defendant's motion to disqualify Jerry A. Ruthruff as counsel for Opuna, LLC without reviewing its merits because she remanded the case to state court

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00135 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.110

and did not want to foreclose consideration by the state court of this issue.

12. In *re Examination of Kayak Kauai*, 2004 WL 1199170 (D. Haw April 19, 2004), I recommended that the petition to quash the summons should be denied, except as to one paragraph of the summons. The district judge sustained the government's objections to strike the one paragraph as violating the privacy rights of other entities and reversed as to that finding.

In addition, there are motions or decisions concerning discovery or other matters that I have ruled upon and that a party has appealed to the district judge. I estimate the number of these motions that possibly have been appealed to be 50-70, the majority of which resulted in my decisions being sustained. These decisions are, for the most part, not officially reported but would be maintained in the court's electronic filing system. An example would be: in *United States v. Williams*, Cr. No. 06-00079 DAE, I had ruled that certain sections contained in paragraph 8 of a defendant's plea agreement would be sealed until she took the stand to testify at trial. My order denying reconsideration of the motion to seal can be found at 2007 WL 1294519 (D. Haw. Apr. 30, 2007). The defendant appealed this decision, and the district judge affirmed in part and reversed in part; specifically reversing my decision that certain sections would not be sealed, and ordered that the entire paragraph would be sealed until the defendant completed her testimony, and counsel the court had been consulted. A copy of the district court's order is supplied.

13. In *White v. Sabatino*, 526 F.Supp.2d 1134 (D. Haw. 2007), the district judge rejected my findings and recommendation to grant Defendant's petition for determination of good faith settlement. He found that the settlement was governed by admiralty law and thus a determination of good faith settlement pursuant to state law was not necessary or appropriate.

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

As a Magistrate Judge in the District of Hawaii, all pretrial matters in civil cases, except for motions that will disposed of the case (such as motions for summary judgment) or involve injunctive relief (such as preliminary injunction motions) are automatically referred to me. In addition, there are civil cases where the parties have consented to my jurisdiction.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00136 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.111

For the consent cases, most of the decisions have been published, either in a published reporter or through an electronic publication.

For those matters that have been referred to me, many but not all have been published through an electronic publication. I estimate that I have issued decisions in matters referred to me in the range of 300-400 orders over the past ten years. All of these orders starting from 2006 are available through the electronic court filing system for the District of Hawaii. I have never designated any of my decisions for publication in any reporter system. Our Court does not issue unpublished decisions, although not every opinion is selected for publication in a published report or through electronic publication.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *Christian v. Bissen*,Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, *Christian v. White*, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, *Christian v. Frank*, No. 08-17236, - F.3d - , 2010 WL 572735.

2. *Kamakana v. City of Honolulu*, Civ. No. 00-729, 2002 WL 32255355 (D. Haw. Nov. 25, 2002), aff'd, 447 F.3d 1172 (9th Cir. 2006).

3. *United States v. Williams*, 586 F.Supp.2d 1145 (D. Haw. 2008).

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

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00137 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.112

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

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

I was requested to recuse in the case known as *Na Pali Haweo Community Association v. Grande*, Civ. No. 04-99413. I had conducted several settlement conferences in this matter and the parties had agreed in concept to a settlement. Counsel for defendants took issue with the settlement and apparently came to the conclusion that I could not be impartial regarding the remaining issue, which was the attorney's fees and costs that his clients would pay to plaintiff. He filed a motion to have me recused or disqualified to serve as the magistrate judge in the case. I chose to recuse myself while the motion was pending before the district judge. I did not agree with his assertion but concluded that, because he believed that I was predisposed against his clients on the issue of the attorney's fee award, the litigants would be better served by having another magistrate judge handle the remaining issue in this matter.

In *Thames v. Miller*, Civ. No. 04-0644, the pro se Plaintiff filed a motion to have the district judge remove and disqualify me as the magistrate judge in this case, alleging that I was biased against him. The district judge denied the motion. Plaintiff also alleged that he had sought my recusal and that I had declined to recuse, though I have no recollection of and have found no record of being asked to recuse myself in this case.

In *United States v. Williams*, Cr. No. 06-00079, there was no motion filed seeking to recuse or disqualify. It is my understanding that some of the attorneys, while in a conference with the district judge, asked to replace me as the magistrate judge. Following that conference, the district judge ordered that another magistrate judge be assigned to the case but did not state any reason.

For all other recusals, the District of Hawaii has a case report system that provides regular reports regarding a search for conflict of interest based on names of persons or entities that I list on my conflicts list. I maintain a standing recusal list of individuals and entities consistent with the Code of Conduct for United States Judges. The entities consist of companies in which I own stock, have any ownership interest, or have obtained a mortgage, and close friends and family who are lawyers. For the first five years that I was a judge, I also included lawyers from my former law firm but I no longer do so. I also review the parties and counsel in each case to make sure that I do not have a close relationship to any of the counsel, parties or identified witnesses that may give rise to the appearance of impropriety.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00138 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.113

I recused myself from the following cases because of a personal relationship with a party or attorney:

United States v. Morton, Cr. No. 03-00179 (neighbor was defendant)
Dubin v. Real, Civ. No. 03-00058 (fellow judge was defendant)
Focus Entertainment International, Inc. v. Sofos Realty Corp., Civ. No. 99-00626 (lead counsel was associated with my former firm)
Jacob Doe v. Kamehameha Schools, Civ. No. 08-00359 (counsel served with me on parent-teacher-student association)
Knox v. City & County of Honolulu, Civ. No. 04-00260 (friendship with lead counsel)
Johrei Hawaii v. Sekai Kyusei Kyo Izunome, Civ. No. 07-00252 (parties and entities were associated with the church I attend)
Lee v. Chang, Civ. No. 04-00299 (fellow judge was defendant)
Morgan Stanley & Co. v. Choy, Civ. No. 08-00467 (related to key witness)
Peabody ex rel United States v. Gillmor; Civ. No. 07-00148 (district judges were defendants)

I recused myself from the following cases because of financial interest in Safeway, Inc.:

Safeway, Inc. v. Ace American Insurance Co., Civ. No. 09-00528
Galacgac v. Safeway, Inc., Civ. No. 02-00624
Equal Employment Opportunity Commission v. Safeway, Inc., Civ. No. 99-00593

I recused myself from the following cases because all of the judges of our district recused from the case in light of the identity of a party or witness:

Schulze v. Maglasang, Civ. No. 06-00490 (AUSA was a defendant)
Aiu v. Alm, Civ. No. 99-00677 (US Attorney was defendant)
Alibang v. Tesoro Hawaii Corp, Civ. No. 08-00130
Arakaki v. Conseco Life Insurance Co., Civ. No. 05-00026

I recused myself from the following cases because I represented a party to the case (or a related party) when I was in private practice:

U.S. Automobile Assoc. v. Sears, Roebuck and Co., Civ. No. 99-00868
Dale Requarth v. Hawaii Health Systems Corp., Civ. No. 02-00392
Lindsey v. Hee, Civ. No. 00-00138
Cockett v. Ray, Civ. No. 99-00873
Jarog v. The Harford Insurance Co., Civ. No. 99-00632
Federal Election Commission v. Friends for Fasi, Civ. No. 00-00024
Aarona v. Unity House, Inc., Civ. No. 05-00197

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00139 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.114

American Promotional Events, Inc. v. Asia Pacific Trading Group, Inc., Civ. No. 02-00018
Kazi Restaurants of Hawaii, Inc. v. Royal Products, Inc., Civ. No. 05-00053
Lino v. American Home Products Corp., Civ. No. 99-00833
United States, ex rel. James Lockyer, M.D. v. Hawaii Pacific Health, Civ. No. 04-00596
Wagner v. American Home Products Corp, Civ. No. 99-00473

I recused myself from the following cases because an attorney on the case had been appointed to serve on the committee evaluating me for re-appointment as a magistrate judge:

Silva v. Allstate Ins. Co., Civ. No. 06-00617
UMG Recordings, Inc. v. Armstrong, Civ. No. 07-00017
Sony BMG Music Entertainment v. Chenoweth., Civ. No. 07-00051
Reece v. Island Treasurer Art Gallery, Civ. No. 06-00489
Reece v. Iervilino, Civ. No. 05-00638
Patricia N. v. Lemahieu, Civ. No. 00-00252
Kowalski v. Asiana Management Group, Inc., Civ. No. 04-00080
Tokashiki v. Freitas, Civ. No. 03-00065
Aloha Airlines, Inc. v. Mesa Air Group, Inc., Civ. No. 07-00007
Virgin Records America, Inc. v. Damo, Civ. No. 07-00018
Wendell E. v. Department of Education, State of Hawaii, Civ. No. 07-00103

I had particular reasons for recusal in the following cases:

General Star National Insurance Co. v. Bordner, Civ. No. 06-00091. I recused myself because I could be construed has having a financial interest in the outcome of the case.

In the Matter of the Complaint of the University of Hawaii, etc., Civ. No. 05-00584. I recused myself from this case because one of the party's key expert witness was a person whom I had defended a lawsuit against on behalf of a client and subsequently sued to recover costs.

Munguia v. Grelyn of Maui, Civ. No. 09-00058. I recused from this case because the defendant was represented by an attorney who was a member of the Hawaii Federal Judicial Selection Commission and I had just submitted my application to that commission.

Reliance Insurance v. The Doctors Co., Civ. No. 02-00159. I recused myself because the defendant was an insurance company for most of the physicians that I represented in private practice and lead counsel was an attorney with whom I had worked on cases representing these clients.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00140 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.115

United States v. Curtis Takemoto-Gentile; MC No. 05-00096 DAE-LEK. I recused myself from this case because one of the respondent's lead counsel was an attorney that I had defended in private practice.

United States v. Trenholm, Civ. No. 05-00131 DAE-LEK. I recused myself from this case because one of the respondent's lead counsel was an attorney that I had defended in private practice.

I have been unable to recall or identify the reasons for my recusal in the following cases:

Hanakahi v. United States, Civ. No. 00-00807
United States v. Brown, Cr. No. 99-00296
Cromack v. Hawaii Management Alliance Association, Civ. No. 99-00893

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

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

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office. I have held no public office.

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

I have not been a member of or held any office in a political party or election committee. I have not held a paid position or played a role in a political campaign.

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

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

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

I did not serve as a clerk to a judge after graduating from law school.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00141 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.116

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

I have never practiced law alone.

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

1983-1984
Office of the Prosecuting Attorney, City and County of Honolulu
1164 Bishop Street
Honolulu, Hawaii 96813
Deputy Prosecuting Attorney

1984-1999
Fujiyama, Duffy & Fujiyama
2700 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Partner (1991-1999)
Associate (1984-1991)

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

I have served as a volunteer arbitrator for the Court-Annexed Arbitration Program in state court. All personal injury cases were required to be arbitrated in this non-binding program. I do not recall the names of these cases and estimate that I probably served as an arbitrator in about 5-7 cases. In addition, I served as an arbitrator in less than 10 cases involving uninsured motorists and/or under-insured motorists' benefits but I cannot recall the names of these cases. My former law firm was disbanded in approximately 2001, and I am unable to access these records.

As a magistrate judge, I handle settlement conferences in almost every civil case referred to me. Since my appointment in August 1999, I have probably held hundreds of settlement conferences. Below is a short list of some of the cases in which I have served as settlement judge that resulted in settlement in 2009:

1. *Meztler Contracting Co. LLC v. Stephens*, Civ. No. 07-00261 LEK. This case involved claims for defamation arising out of the construction of a luxury home. Several settlement conferences were held with parties who

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00142 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.117

were extremely contentious. A settlement was reached on October 23, 2009.

2. *Blake, et al. v. City & County of Honolulu*; Civ. No. 08-00281 LEK. This case involved a class action alleging that Section 8 housing tenants were overcharged for utilities and the case settled on November 30, 2009.

3. *Kalaka Nui, Inc. v. Actus Lend Lease LLC*, Civ. No. 08-00308 SOM-LEK. This case involved contract and other claims arising out of a federal construction contract. The case settled on May 15, 2009 following a settlement conference.

4. *Epifanio Pacquing v. LG Electronics Inc.*, Civ. No. 08-00261 DAE-LEK. This case involved product liability claims for damages incurred as the result of a fire allegedly caused by an air conditioner manufactured by LG Electronics. Settlement was placed on the record on September 29, 2009 after several settlement conferences had been previously held.

5. *Dan v. Albar Precious Metal Refining Inc., et al.*, Civ. No. 08-00150 JMS-LEK. This case involved trademark infringement claims. Settlement was reached on September 21, 2009 following settlement conferences.

6. *Yuting Hu v. University of Hawaii*, Civ. No. 07-00410 SPK-LEK. This case involved claims of sexual harassment and abuse, and discrimination in the workplace. It was extremely contentious. Settlement was reached on October 22, 2009 after many settlement conferences.

7. *Narvaes v. EMC Mortgage Corp.*, Civ. No. 07-00621 DAE-KSC. This case involved claims of unfair trade practices and violation of federal truth in lending statutes. The parties reached a settlement on September 9, 2009 after several settlement conferences.

8. *AAA Hawaii LLC v. Hawaii Insurance Consultants, Inc.*, Civ. No. 08-00299 DAE-LEK. This case involved a contract dispute regarding compensation paid to AAA when their members purchased insurance from the defendant. This case settled following a settlement conference held on February 4, 2009.

9. *Kamaole Point Development v. County of Maui*, Civ. No. 07-00447 DAE-LEK. This case involved a development company that sued the County of Maui over the rights to develop real property that it owned. The County had promulgated an ordinance that required developers to provide residential workforce housing units and the developer alleged that the ordinance was an impermissible taking of its property. Settlement was reached on November 23, 2009 after two settlement conferences.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00143 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.118

10. *Ritchie v. Wahiawa General Hospital*, Civ. No. 08-00133 JMS-LEK. This case involved negligence claims against a hospital for disposing of the remains of the plaintiffs' baby without their permission. Settlement was reached on March 16, 2009 following two settlement conferences.

b. Describe:

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

I have served as a magistrate judge for the District of Hawaii since August 1999. From 1983 to 1984, I was a deputy prosecuting attorney for the City and County of Honolulu in the State of Hawaii. From about August to October 1983, I did research and writing for the appellate division. When I was admitted to the Hawaii state bar in October 1983, I was given a caseload of traffic and misdemeanor cases to prosecute. In March 1984, I was promoted to felony prosecutions. In 1984, I joined the law firm of Fujiyama, Duffy & Fujiyama where my practice focused entirely on litigation. From 1984 to 1986, I primarily defended individuals and entities in personal injury lawsuits. From 1986, my practice largely involved product liability defense, professional liability defense, and commercial and complex litigation.

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

My clients in private practice from 1984 to 1986 typically were persons or entities insured by automobile liability, homeowner liability or commercial liability insurers. From 1986 to 1999, my clients included medical device manufacturers, pharmaceutical companies, physicians, hospitals, lawyers, governmental agencies, and the owner of Ala Moana Center.

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

My entire practice has been in litigation. When I was a deputy prosecuting attorney, I appeared in court daily. While in private practice, I appeared in court often and would average several court appearances per month. I was involved in a 6-month trial on the island of Maui in 1990, and in a 6-month trial in Honolulu in 1991 and appeared in court almost daily during the entirety of these trials.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00144 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.119

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 90%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99%
   2. criminal proceedings: 1%

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

I tried to verdict seventeen cases, 13 as sole counsel, 1 as lead counsel, and 3 as associate counsel.

i. What percentage of these trials were:
   1. jury: 82%
   2. non-jury: 18%

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

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

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

a. the date of representation;

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

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

1. *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. 388, 31 P.3d 901 (Haw. 2001). The Office of Hawaiian Affairs sued the State of Hawaii to

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00145 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.120

recover its share of revenues that the State collected from ceded lands, including land upon which part of the Honolulu International Airport is located. Summary judgment had been granted in favor of the Office of Hawaiian Affairs on October 24, 1996 and was reversed and dismissed by the Hawaii Supreme Court on the basis that the state statute providing for payment of the airport revenues was precluded by federal statute.

I represented the Office of Hawaiian Affairs from approximately 1995 to 1999, when I accepted the appointment as a Magistrate Judge. I headed the team that drafted the motions for summary judgment, and was in charge of conducting discovery. My partner and I argued the motions for summary judgment. On the appeal, I assisted in preparing my partner for oral argument and attended the hearing.

The case was litigated in the First Circuit Court of Hawaii and before Judge Daniel Heely (who granted summary judgment), and on appeal before the Hawaii Supreme Court. At the time of the oral argument, the justices were Chief Justice Ronald Moon, Associate Justice Robert Klein, Associate Justice Stephen Levinson, Associate Justice Paula Nakayama and Associate Justice Mario Ramil.

Counsel for Defendant, Charlene Aina, Dorothy Sellers, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255. Co-Counsel were Archie T. Ikehara & Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Twr., 737 Bishop Street, Suite 1400, Honolulu, HI 96813, Tel 808-536-3711; and James E. Duffy, Supreme Court of Hawaii, Associate Justice, 417 S. King Street, Honolulu, HI 96813, Tel 808-539-4715.

2. *Oliver Pacific Corp. v. Daiei Hawaii Investment, Inc.*, Civ. No. 91-0-003488. I represented Daiei Hawaii Investment, Inc. which was, at the time, a joint owner of the Ala Moana Center, the largest shopping center in Honolulu. A former tenant alleged that Daiei and others were liable for misrepresentation and tortuous interference with her business.

I was the trial counsel for Daiei in a non-jury trial in 1993. The trial resulted in a verdict in favor of the defendants.

The case was litigated in the First Circuit Court of Hawaii and before Judge Karen Blondin.

Counsel for Plaintiff was David Schutter (deceased) & Gary Leavitt (no known address). Counsel for Co-Defendant were Gary Grimmer, Carlsmith Ball, American Savings Bank Tower, 1001 Bishop Street, Suite 2200, Honolulu, HI 96813, Tel 808-523-2500.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00146 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.121

3. *Dutro v. Sterling Drug, Inc.*, Civ. No. 85-0-003016. Mrs. Dutro experienced cardiac arrest while giving birth to her son and after she was administered a local anesthetic agent known as Marcaine. Mrs. Dutro sued Sterling Drug and its affiliates for product liability as well as Maui Memorial Hospital and Blair McIver, M.D. for medical negligence.

   I represented Sterling Drug, Inc., the manufacturer of Marcaine, from 1986-1988. I conducted the majority of the discovery and preparation of expert witnesses. Discovery was extensive.

   This case was litigated in the Second Circuit Court of Hawaii and before Judge Edwin Honda. A settlement was reached and the case was dismissed.

   Counsel for Plaintiff was Jan Weinberg, 1164 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-523-9477. Counsel for Co-Defendant Dr. McIver was Jeffery Sia, Ayabe Chong Nishimoto Sia & Nakamura, Pauahi Tower, Suite 2500, 1001 Bishop Street, Honolulu, HI 96813, Tel 808-537-6119. Counsel for Co-Defendant Maui Memorial Hospital was Phillip Li, Li & Tsukazaki, 753 Bishop St., Suite 1770, Honolulu, HI 96813, Tel 808-524-4888.

4. *Tosei Shoji Co., Ltd v. Stewart Title Guaranty Co.*, Civ. 94-00663 HG-FIY. From 1994-1996, I represented Gary Shigemura, an attorney, who had informally assisted Plaintiff Tosei Shoji Co. in the purchase of real property in Hawaii. After the purchase, Tosei was less than satisfied with the property and problems were discovered regarding information provided by the title company. I drafted a motion for summary judgment, conducted all discovery, reviewed documents for privilege and prepared them for production, and participated in settlement discussions with the parties and the magistrate judge.

   This case was litigated in federal court in the District of Hawaii and before District Judge Helen Gillmor. A settlement was reached and the case was dismissed.

   Counsel for Plaintiff was Susan Ichinose, P.O. Box 24749, Honolulu, HI 96813, Tel 808-377-8800. Counsel for Co-Defendant Stewart Title Company was Neil F. Hulbert, Alston Hunt Floyd & Ing, ASB Tower, 1001 Bishop St., Suite 1800, Honolulu, HI 96813, Tel 808-524-1800. Counsel for Co-Defendant Island Title Company was James T. Wong, 810 Richards St., Suite 748, Honolulu, HI 96813, Tel 808-526-9664. Counsel for Third-Party ESPO Hawaii was Elizabeth Kane, P.O. Box 27145, Honolulu, HI 96827, Tel 808-525-6301.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00147 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.122

5. *Naftel v. Arthur Anderson Co.*, Civ. No. 87-0-001075. This case involved claims of negligence and fraud against individuals employed by Arthur Anderson Co. Plaintiff Naftel had consulted with partners in the Honolulu office for Arthur Anderson Co. regarding his plans to start a commercial fishing operation for shrimp in the Northwest Pacific Islands. This venture failed badly.

I was part of the trial team for Arthur Anderson Co., and represented it from 1990-1991. In pretrial, I conducted discovery, including numerous depositions, pretrial motions practice and witness preparation. At trial, I assisted in jury selection, and preparing and examining witnesses, including cross-examination.

This case was litigated in the First Circuit Court of Hawaii and went to trial for six months before Judge Leland Spencer, and resulted in a jury verdict in favor of Arthur Anderson Co.

Counsel for Plaintiff were George W. Ashford, 1050 Auloa Road, Kailua, HI 96734, Tel 808-528-0444 and Jacqueline Earle, Goodsill Anderson Quinn & Stifel, 1099 Alakea St., Suite 1800, Honolulu, HI 96813, Tel 808-547-5600. Co-Counsel were Glenn K. Sato, 888 Mililani St., PH 1, Honolulu, HI 96813, Tel 808-537-1625 and Ross N. Taosaka, Hughes & LaFountaine, Pauahi Tower, Suite 2525, 1001 Bishop Street, Honolulu, HI 96813, 808-526-9744.

6. *Taylor v. Hamilton*, Civ. No 94-0-003545. From 1995-1999, I represented Defendant Hamilton, a family law attorney, who was sued by a former client for legal malpractice. Plaintiff Taylor had been represented by Mr. Hamilton in her divorce proceeding and trial. The marital estate included a substantial land holding of undeveloped land on Kauai, as well as significant liquid assets. Property division was highly contested in the divorce trial. A few years after the trial and property division decision, Mrs. Taylor became dissatisfied with the outcome and sued Mr. Hamilton.

The case was initially filed in the First Circuit Court of Hawaii. I believe the judge assigned to the case was Judge Gail Nakatani. Extensive discovery was undertaken. A jury trial was scheduled in this case but the parties agreed to submit the matter to a three-panel arbitration. The arbitrators were Edward King, a part-time Magistrate Judge, Charles Kleintop, a family law attorney in the State of Hawaii, and a third person who, I believe, was an attorney or retired judge from the West Coast and whose name I cannot now recall. The arbitration took place in 1999 and in Honolulu. The proceeding took several days and included extensive testimony by expert witnesses. It resulted in a decision in favor of Mr. Hamilton. The state court action was subsequently dismissed on October 18, 1999.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00148 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.123

Counsel for Plaintiff was Charles J. Ferrera, 735 Bishop Street, Suite 422, Honolulu, HI 96813, Tel 808-599-5220.

7. *Otis Elevator Co. v. Furusho*, Civ. No. 91-00526 DAE-BMK. From 1992 to 1993, I represented Defendant Furusho and his law firm, Hisaka Furusho & Ayabe, who were sued by their former client, Otis Elevator Co., for legal malpractice. Mr. Furusho had represented Otis Elevator Co. in a state court lawsuit in which a child had been injured while riding an escalator. During the state court action, Otis Elevator Co. was significantly sanctioned for failing to produce discovery. Mr. Furusho was replaced as trial counsel and the lawsuit was settled. Otis Elevator then sued him and his law firm.

This action was filed in the federal court of the District of Hawaii, and the judges assigned to this case were District Judge David A. Ezra and Magistrate Judge Barry M. Kurren.

I handled the discovery, motions practice and settlement negotiations in this case. A settlement was reached and the case was dismissed on February 25, 1993.

Counsel for Plaintiff were Sharon A. Merkle & William S. Hunt, Alston Hunt Floyd & Ing, ASB Tower, 1001 Bishop St., Suite 1800, Honolulu, HI 96813, Tel 808-524-1800. Co-Counsel were Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, 737 Bishop Street Suite 1400, Honolulu, HI 96813, Tel 808-536-3711 and James E. Duffy, Supreme Court of Hawaii, Associate Justice, 417 S. King Street, Honolulu, HI 96813, Tel 808-539-4715.

8. *State of Hawaii v. De Morales*, Cr. No. 88-0-221. From 1988-1989, I defended Francis De Morales and other police officers with the Hawaii County Police Department on gambling charges brought against them allegedly in retaliation by Police Chief Guy Paul. This action was filed in the Third Circuit Court of Hawaii, and the presiding judge was Judge Shunichi Kimura.

I conducted discovery and filed several substantive motions. Ultimately, the parties reached an agreement and the State withdrew the charges *nolle prosequi*.

Counsel for Plaintiff was Ricky Dammerville, Office of the Prosecuting Attorney, 655 Kilauea Ave., Hilo, HI 96720, Tel 808-934-3403.

9. *Pedrina v. Han Kuk Chun*, Civ. No. 89-00439 ACK. This multiple party action arose out of the sale and development of agricultural land.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00149 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.124

Numerous claims were alleged, including civil RICO claims. From 1994 to 1999, I represented Frank F. Fasi, former mayor of the City and County of Honolulu, in this action. The allegations against him generally involved claims that his misuse of public office resulted in zoning changes which caused the purchaser of the agricultural lands in issue to be able to develop the property for commercial use and to evict farmers from property that they had leased for years.

I conducted discovery and very extensive motions practice. Summary judgment was entered in favor of Mr. Fasi and he was dismissed from the case.

Counsel for Plaintiff was Anthony P. Locricchio, 908 Mauanwili Circle, Kailua, HI 96734, Tel 808-261-7733. Counsel for Co-Defendant was Mei Nakamoto, Davies Pacific Center, 841 Bishop Street, Suite 1020, Honolulu, HI 96813, Tel 808-695-6254. My co-counsel were Archie T. Ikehara & Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, Suite 1400, 737 Bishop Street, Honolulu, HI 96813, Tel 808-536-3711.

10. *Tom v. Wyeth Laboratories*, Civ. No. 1CC86-0-001634. I represented Wyeth Laboratories from 1986-1989 in a lawsuit alleging claims of product liability and medical negligence. Wyeth manufactures vaccines including the Diptheria Pertussis and Tetanus vaccine (commonly referred to as ADTP) that is recommended to be given to infants and children. Plaintiff Tom was given the DTP vaccine series when he was an infant by his pediatrician, Dr. Ho. His parents contended that his seizure disorder was caused by this vaccine.

This case was filed in the First Circuit Court of Hawaii, and the presiding judge was Judge Robert Klein.

I conducted discovery and motions practice in this case which ultimately was dismissed without prejudice as to Manchester's claims which were submitted by stipulation to the national vaccine claims program, and with prejudice as to his parents' claims.

Counsel for Plaintiffs were David Schutter (deceased) & Priscilla Mills, Northern Arizona University, P.O. Box 4083, Flagstaff, AZ 86011, Tel 928-523-7855. Co-counsel was Archie T. Ikehara, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, 737 Bishop Street, Suite 1400, Honolulu, HI 96813, Tel 808-536-3711. Counsel for Co-Defendants were Brian Aburano, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-586-0618 and Edmund Burke, Burke McPheeters Bordner & Estes, Pacific Guardian Center, Mauka Tower, 737 Bishop Street, Suite 3100, Honolulu, HI 96813, Tel 808-523-9833.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00150 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.125

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

    In the latter part of my private practice, I defended lawyers, physicians, nurses and medical personnel in matters involving malpractice claims. These were sensitive cases in that the professionals who had been sued were typically devastated and often outraged by the claims. I was required to develop counseling and evaluation skills in addition to litigating these cases. One particular lawsuit involved a partner in a law firm who was sued by a former associate for sexual harassment. I was ultimately able to resolve the case relatively swiftly and discretely but only after spending considerable time with the attorney and his partners. Representing people in the medical field was quite interesting and challenging as well. Most physicians were distrustful of lawyers and highly suspicious of the legal system. Any settlement usually required the physician's consent and most often resulted in the doctor being adversely reported in the national physician reporting system. Getting these clients to work cooperatively in a positive manner often required a lot of communication and detailed medical knowledge about the particular case.

    I have not performed lobbying activities on behalf of any client.

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

    I taught Pretrial Litigation in 2001 and 2002 as an adjunct professor at the William S. Richardson School of Law, University of Hawaii. This course covered pretrial matters such as discovery and motions practice. Syllabus supplied.

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

    None.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00151 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.126

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

    None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       As a Magistrate Judge, I maintain a conflict of interest system through the district court and address any potential conflicts in this manner. I do not anticipate any special or additional conflicts in the event I am confirmed and appointed as a United States District Judge.

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

       If confirmed, I would continue to use the automatic recusal system of our court. I would examine lists of counsel, parties and potential witnesses in all cases assigned to me to ensure that my involvement would not raise an appearance of impropriety. At all times, I would continue to follow the recusal statutes and the Code of Conduct for United States Judges.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00152 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.127

When I was in private practice, I accepted pro bono cases involving uncontested divorces from Volunteer Legal Services Hawaii (VLASH) and would work monthly doing consultations on a Saturday at its downtown walk-in clinic as well as follow up. The amount of time involved was approximately 25-30 hours a year. I also served on the VLASH Board of Directors.

Since I have been appointed as a magistrate judge, I can no longer practice law and cannot take pro bono cases. Instead, I taught a pre-trial litigation class at the law school for two years, and I volunteer my time to the Hawaii Bar Association, and to continuing education matters. I also take on college and law students as externs in my chambers, speak to students at the law school, and serve on district court and Ninth Circuit committees. I estimate these matters taking up about 50-60 hours a year.

26. **Selection Process**:

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

On September 2, 2009, I submitted an application to Lawrence Okinaga, Chair of the Hawaii Federal Judicial Selection Commission. I was interviewed in October by the members of this commission in Honolulu, Hawaii. On January 5, 2010, I was interviewed by Senator Daniel K. Inouye and Senator Daniel K. Akaka in Senator Inouye's office in Honolulu, Hawaii.

On January 15, 2010, I was contacted by staff from the Department of Justice regarding the preparation of nomination paperwork. I have had subsequent conversations with Department of Justice staff regarding that paperwork and the nomination process. On February 25, 2010, I interviewed in Washington, DC, with attorneys from the White House Counsel's Office and the Department of Justice. The President submitted my nomination to the Senate on April 21, 2010.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00153 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.128

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Kobayashi,, Leslie E.	US Ddistrict Court, District of Hawaii	04/21/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge - Nominee	☑ Nomination, Date 04/21/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 03/31/2010
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 Courthouse 300 Ala Moana Blvd. Rm. C-353 Honolulu, Hawaii 96850	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.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 10	Name of Person Reporting	Date of Report
	Kobayashi,, Leslie E.	04/21/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2009	State of Hawaii, Judiciary/Salary
2.	2010	State of Hawaii, Judiciary/Salary
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting	Date of Report
	Kobayashi,, Leslie E.	04/21/2010

V. GIFTS. *(Includes those to sponse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of sponse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	American Express	Credit Card	J
2.	City Bank	Line of Credit	J
3.	First Hawaiian Bank	Line of Credit	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 10

Name of Person Reporting	Date of Report
Kobayashi,, Leslie E.	04/21/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. IRA Rollover	G	Dividend	J	T	Exempt				
2. - MS Liq. Asset Fund									
3. - Allianz NFJ SM-Cap Value A									
4. - Gabelli Equity Income Fund									
5. - T. Rowe Price Mid Cap Gr Adv									
6. - Seligman Emerging Markets A									
7. -Legg Mason Ptners GL Hiyld Bd A									
8. - MFS Limited Maturity A (Mutual Fund)									
9. - Templeton Foreign Fund A									
10. - Western Asset Core Plus BD FI									
11. - Amer Cent Growth Adv									
12. AIM Constellation Fund Class A	A	Dividend	K	T					
13. MSDW Liquid Asset Fund	A	Interest	J	T					
14. Honolulu FCU (bank account)	A	Interest	J	T					
15. McDonald's Corp. (Common Stock)	A	Dividend	J	T					
16. MSDW Dividend Growth Fund B	A	Dividend	J	T					
17. MSDW Small Cap Growth Fund B		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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 10	Name of Person Reporting Kobayashi,, Leslie E.	Date of Report 04/21/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. MSDW Aggressive Equity Fund B		None	J	T					
19. MSDW Global Div Growth B		None	J	T					
20. Safeway Inc. (Common Stock)	A	Dividend	J	T					
21. Phoenix Engermann Growth A	A	Dividend	J	T					
22. MDSDW Competitive Edge Fund		None	J	T					
23. MSDW Am Opportunity Fund		None	J	T					
24. Walt Disney Co. (Common Stock)	A	Dividend	J	T					
25. MSDW Growth Securities B	A	Dividend	J	T					
26. MSDW Global Dividend Growth D	A	Dividend	J	T					
27. MSDW Competitive Edge Bip B		None	J	T					
28. Salomon HI Yld BD FD Cl A		None	J	T					
29. IM Enterprise Growth FD Cl A		None	J	T					
30. Pimco Small-Cap Value Fd Cl A		None	J	T					
31. Enterprise Group Fund Grwth PT		None	J	T					
32. MS Limited Maturity Fund A (Mutual Fund)	A	Dividend	J	T					
33. Fidelity Adv Intermed BD T		None							
34. Developing Grw Securities B		None	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 10

Name of Person Reporting	Date of Report
Kobayashi,, Leslie E.	04/21/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
35. Information Fund B		None	J	T					
36. General Electric Co. (Common Stock)		None	J	T					
37. Wachovia Securities-Franklin Bank Certificate of Deposit	A	Interest	J	T					
38. United States Savings Bond Series EE		None	J	T					
39. MSDW Strategist Fund B	A	Dividend	J	T					
40. CollegeBoundfund (Not self-directed)		None	J	T					
41. MSDW Dividend Growth D	A	Dividend	J	T					
42. Phoenix All-Cap Growth A	A	Dividend	J	T					
43. Focus Growth Fund B	A	Dividend	J	T					
44. Strategist Fund A	A	Int./Div.	J	T					
45. MS Equally Weighted S&P 500 C	A	Dividend	J	T					
46. MS Equally Weighted S&P 500 C	A	Dividend	J	T					
47. Citadel Broadcasting Corp. (Common Stock)		None	J	T					
48. MS Dividend Grwth Securities D		None							
49. MS Global Advantage Fund A	A	Int./Div.	J	T					
50. MS Global Dividend Grwth Sec D	A	Dividend	J	T					
51. MS Mid-Cap Growth B		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	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 7 of 10

Name of Person Reporting	Date of Report
Kobayashi,, Leslie E.	04/21/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
52. MS Capital Opportunites TR A	A	Dividend	J	T					
53. ING ESII Annuity		None	M	T					
54. American Century Growth Advantage (Mutual Fund)	A	Dividend	J	T					
55. indyMac Bank Certificate of Deposit	A	Int./Div.	J	T					
56. Blackrock Intrm Bond Svc		None	J	T					
57. MFS Value A (Mutual Fund)		None	J	T					
58. Fidelity Adv Lvgd Compny Stk A		None							
59. Jennison Mid Cap Growth A		None							
60. Lazard Emerging Markets Open		None							
61. Perkins Mid Cap Val Div	A	Dividend	J	T					
62. Allianz NFJ Intl Value A	A	Dividend	J	T					
63. Dryden Sh Trm Corp Bd A	A	Dividend	J	T					
64. DWS Large Cap Value A	A	Int./Div.	J	T					
65. Ivy large Cap Grw A	A	Int./Div.	J	T					
66. Pimco Low Duration FD A	A	Int./Div.	J	T					
67. TCW Total Ret Bd N	A	Int./Div.	J	T					
68. MS Limited Maturity A (Mutual Fund)	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 8 of 10	Name of Person Reporting Kobayashi,, Leslie E.	Date of Report 04/21/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. Morgan Stanley Bank	A	Interest	J	T					
70. Custodial Trust Co Certificate of Deposit		None							
71. Blackrock Equity Dividend A	A	Int./Div.	J	T					
72. Blackrock Bond PTF Svc	A	Int./Div.	J	T					
73. MS Focus Growth Fund A		None	J	T					
74. MS Global Dividend Growth Sec B		None	J	T					
75. DWS Real Estate Sec A (Mutual Fund)		None	J	T					
76. Pimco Real Return Fund A		None	J	T					
77. Virtus Strategic Grw A		None	J	T					
78. Virtus All-Cap Growth A		None	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 9 of 10	Name of Person Reporting Kobayashi,, Leslie E.	Date of Report 04/21/2010

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

III.A. Non reportable non investment income earned during reporting period for service as US Magistrate Judge.

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Kobayashi,, Leslie E.	Date of Report 04/21/2010

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 Leslie E. Kobayashi

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		46	500	Notes payable to banks-secured		7	500
U.S. Government securities-add schedule			300	Notes payable to banks-unsecured		18	000
Listed securities-add schedule		227	613	Notes payable to relatives			
Unlisted securities--add schedule		270	200	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	000
Due from relatives and friends				Unpaid income tax			
Due from others		7	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		620	000
Real estate owned-add schedule		820	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		23	000	Private school tuition for remainder of 2009-10 and for 2010-11		27	600
Cash value-life insurance				Divorce property division payments (Clarence Pacarro)		80	000
Other assets itemize:							
				Total liabilities		754	100
				Net Worth		640	513
Total Assets	1	394	613	Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a 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	$ 300
Listed Securities	
AEGFX	$ 6,300
AFJAX	6,900
AMOAX	11,500
CPOAX	15,000
CSTGX	10,600
DIS	54
DIVBX	50
FLSAX	2,600
GABEX	18,900
GFAFX	6,600
GLBBX	9
JMCVX	2,300
KDCAX	4,600
LZOEX	3,100
MEIAX	9,000
MBRSX	5,900
MCD	1,100
MDDVX	4,300
MQLFX	12,000
PAMCX	10,200
PBSMX	6,300
PCVAX	6,400
PIBSX	4,000
PRTNX	4,100
PSTAX	1,800
PTLAX	6,100
SAHYX	5,900
SWY	2,000
TEMFX	12,200
TCRAX	10,600
TGMNX	8,100
TWGAX	5,000
WACIX	18,000
WLGAX	6,100
Total Listed Securities	227,613

Unlisted Securities	
ENGESII Variable Annuity	$ 183,000
Thrift Savings Account	87,200
Total Unlisted Securities	270,200
Real Estate Owned	
Personal residence	$ 820,000
Real Estate Mortgages Payable	
Personal residence	$ 620,000

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00165 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

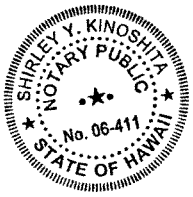
66720.140

AFFIDAVIT

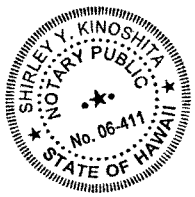
I, Leslie E. Kobayashi, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 19, 2010
(DATE)

Leslie E. Kobayashi
(NAME)



Shirley Y Kinoshita
(NOTARY) Shirley Y Kinoshita



NOTARY PUBLIC CERTIFICATION
Name: Shirley Y Kinoshita 1st Circuit
Doc. Description: United States Senate Committee on the Judiciary Questionnaire For Judicial Nominees
No. of Pages: 64 Date of Doc. 4/11/10
Shirley Y Kinoshita 4/19/2010
Notary Signature Date

SHIRLEY Y. KINOSHITA, NOTARY PUBLIC
STATE OF HAWAII
My Commission Expires: 7/9/2010

STATEMENT OF DENISE JEFFERSON CASPER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Ms. CASPER. Thank you, Mr. Chairman. Thank you to you, Senator Kyl, and all the members of the Committee for scheduling this hearing today and allowing me to appear before you. It's an honor for me, it's an honor for my family, and I greatly appreciate the opportunity.

I'd also like to thank Senator Kerry for his kind introduction today and for recommending me to the President for this judicial seat. I am deeply grateful for his confidence in me for this position.

I'd also like to thank Senator Brown for his warm introduction, his willingness to speak to me about my interest in becoming a Federal district court judge, and for his support.

I'd also like to acknowledge and thank Paul Kirk, the previous Senator from Massachusetts, who joined in Senator Kerry's recommendation to the President.

Finally, I would like to thank President Obama for this nomination. I am honored and deeply humbled by it, and I'm very excited and happy to appear before you today.

Mr. Chairman, I'd also like to take the opportunity to introduce my family who are here and my friends and colleagues who have been able to join me, as well.

First and foremost, my husband of 16 years, Marc Casper. Marc's love, support and encouragement over the years have meant the world to me. We're very excited that our two sons, Harry and Jacob, are here. I think they're trying very hard to remain quiet during these proceedings, and I am sure they will continue to do so during all of the nominees' remarks.

[Laughter.]

Ms. CASPER. They are both 6 years old, and they're headed to first grade in the fall. They're very excited about this, their second trip to the Capitol. They didn't remember that much about their first trip, since they were too young, but I'm hoping this trip will be as memorable for them as I know it will always be for me.

I'd also like to introduce my mother, Marcia Jefferson, who has traveled here from the State of New York, my original home state. There is no doubt that the lessons that my mother has taught me about hard work, humility and respect for others have made this moment possible.

I'm very happy that my brother, Darryl Jefferson, and my sister-in-law, Kristy Kershaw Jefferson, are here. We're very excited for them, because they're expecting their first child in the fall, my mother's first granddaughter. So we're very excited they're here.

There are a number of members of my extended family who are here, as well, and I'd like to acknowledge them. My cousin, Louise Dyer, and her husband, Filon, of the capital here in D.C. My uncle, Charles Dyer, of Maryland; my cousin, Hakim Dyer of Maryland, his wife, Marilyn, their son, Faheem.

The Jefferson branch of the family is also well represented. My uncle, Bernie Jefferson, my aunt, Beverly Jefferson, and their grandson, Genis Guzman, are here, as well. And they're also all from New York.

I'm also pleased to be joined by good friends today; my dear, dear, friend, Julia Frost-Davies, who also happens to be the mother

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00167 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

of my goddaughter, Gillian, is here. A good family friend of ours, Meredith Smith, is here. And I'm also happy to say that a number of my sorority sisters and friends of over 20 years from Delta Sigma Theta sorority are here, including Reverend Joy Challenger, Dr. Judith Absalon, and Janice Williams Thomas.

I'm also very happy that a number of my current and former colleagues are here from the U.S. attorney's office, Jim Farmer, Cynthia Young, and Theo Chuang. My current colleagues from the DA's office, Marian Ryan and Jeff Shapiro.

I'm particularly pleased that my good friend and current boss, the Middlesex District Attorney, Gerry Leone, is here, despite all the demands on his time back in the commonwealth.

I am part of a rich legacy, I think, of excellence in public service to come out of the Middlesex District Attorney's office, a legacy that the senior Senator from Massachusetts is very much a part and which Gerry's leadership exemplifies.

I'd like to say a brief word about some people who could not be here today. I understand that a number of my friends and colleagues back in the DA's office are watching the Webcast. I want to thank them for their support and goodwill during the selection process and all the best wishes they've been sending me for today's hearing.

Finally, although certainly he's foremost in my mind today, I'd like to say a word about my late father, Eugene Jefferson. As it is for me, this would have been a huge day for him. He spent part of the early part of his career as a probation officer, and he believed deeply in the importance of the judicial system in our society.

In many ways, his influence on my life has propelled me to this opportunity. He's very much in my thoughts.

Thank you.

Senator DURBIN. Thank you very much.

Mr. Reeves.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Denise Jefferson Casper (formerly, Denise Jefferson)

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

   United States District Judge for the District of Massachusetts

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

   Office: 15 Commonwealth Avenue
   Woburn, Massachusetts 01801

   Residence: Brookline, Massachusetts

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

   1968; East Patchogue, New York

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

   1991 to 1994, Harvard Law School; J.D., 1994.
   1986 to 1990, Wesleyan University; B.A., 1990.

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

   2007 to present
   Middlesex District Attorney's Office
   15 Commonwealth Avenue
   Woburn, Massachusetts 01801
   Deputy District Attorney

66720.142

2005 to 2007
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215
Instructor, First Year Legal Writing Program

1999 to 2005
United States Attorney's Office
John Joseph Moakley United States Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
Deputy Chief, Organized Crime Drug Enforcement Task Force Unit (2004 to 2005)
Assistant United States Attorney (1999 to 2005)

1993, 1995 to 1998
Bingham McCutchen LLP (formerly Bingham, Dana & Gould)
One Federal Street
Boston, Massachusetts 02110
Associate, Litigation Department (1995 to 1998)
Summer Associate, Litigation and Corporate Departments (1993)

1997
Plymouth District Attorney's Office
32 Belmont Street
P.O. Box 6665
Brockton, Massachusetts 02303
Special Assistant District Attorney, Hingham District Court
(as part of an exchange program when I worked at Bingham McCutchen LLP)

1994 to 1995
Massachusetts Appeals Court
John Adams Courthouse
One Pemberton Square
Boston, Massachusetts 02108
Judicial Law Clerk

Summer 1992
United States Attorney's Office
Eastern District of New York
United States Courthouse
300 Rabro Drive
Hauppauge, New York 11788
Summer Intern

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00170 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.143

Summer 1991
Preferred Temporaries, Inc.
Sears Crescent Bldg., Suite 550
Boston, Massachusetts 02108
Part-time summer office worker

1990 to 1991
Action for Children's Television (since dissolved)
20 University Road
Cambridge, Massachusetts 02138
Resource Director

Other Affiliations (uncompensated)

2001 to present
Big Sister Association of Greater Boston, Inc.
161 Massachusetts Avenue
Boston, Massachusetts 02115
Director

2000 to 2008
Women's Bar Foundation
27 School Street
Boston, Massachusetts 02108
Vice President (2004 to 2005)
Secretary (2002 to 2004)
Director (2000 to 2008)

2002 to 2006
Boston Bar Association
16 Beacon Street
Boston, Massachusetts 02108
Secretary (2005 to 2006)
Member, Bar Association Council (2002 to 2006)

1998 to 2004
Volunteer Lawyers' Project
99 Chauncy Street
Suite 400
Boston, Massachusetts 02111
Director

1998 to 2000
Massachusetts Black Women Attorneys
(no permanent address)
Executive Committee

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00171 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.144

1995 to 1999
People Making A Difference Through Community Service, Inc.
P.O. Box 120189
Boston, MA 02112-0189
Chair, Board of Directors

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

I have not served in the military. I did not registered for selective service, as I was not eligible to do so.

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

Wasserstein Public Interest Fellow, 2008, Harvard Law School
Award for Outstanding Contribution, 2005,
New England Narcotic Enforcement Officers' Association
Awards for Outstanding Work in various investigations, 2004, 2005 and 2006,
New England Region Organized Crime Drug Enforcement Task Force
Award for Outstanding Contribution, 2003, Drug Enforcement Administration,
New England Field Division
Boston Fellow, 1997 to 1998, The Partnership, Inc.
Sadie T.M. Alexander Law Scholarship, 1991, Delta Sigma Theta Sorority, Inc.

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

American Bar Association
Boston Bar Association
Secretary, 2005 to 2006
Council, 2002 to 2006
Task Force to Prevent Wrongful Convictions, 2008 to 2009
Diversity Leadership Task Force, 2007 to 2008
Nominating Committee, 2007
Editor, Boston Bar Journal, 2006 to 2007
Vanishing Trial Task Force, 2005 to 2006
Steering Committee, Criminal Law Section, 2000 to 2002
Massachusetts Black Lawyers' Association
Massachusetts Black Women Attorneys
Executive Committee, 1998 to 2000

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00172 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.145

Nominating Committee, 2000
Volunteer Lawyers Project
Director, 1998 to 2004
Personnel Committee, 2002 to 2003
Women's Bar Association/Women's Bar Foundation
Director, Women's Bar Foundation, 2000 to 2008
Vice President, Women's Bar Foundation, 2004 to 2005
Secretary, Women's Bar Foundation, 2002 to 2004
Nominating Committee, Women's Bar Foundation,
various years between 2000 to 2008
Chair, Bylaws Committee, Women's Bar Foundation, 2005
Women's Bar Association Speakers' Bureau, 1999

10. **Bar and Court Admission**:

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

Massachusetts, 1994
New York (Third Department), 1995

There have been no lapses in my membership.

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

United States Court of Appeals for the First Circuit, 1996
United States District Court for the District of Massachusetts, 1996
New York Supreme Court, Appellate Division, Third Department, 1995
Massachusetts, 1994

There have been no lapses in my membership.

11. **Memberships**:

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

Big Sister Association of Greater Boston, Inc.
Director, 2001 to present

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00173 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.146

Nominating Committee, various years between 2001 to present
Host, "Make The Circle Bigger" event, 2007
Big Sister, School-based mentoring program, 2006 to 2007
Co-chair, Big Sister Gala, 2003
Delta Sigma Theta Sorority, Inc., Boston Alumnae chapter, 1997 to present
Historian, 1998 to 2000
People Making a Difference Through Community Service, Inc.
Chair, Board of Directors, 1995 to 1999
Pine Manor College
Board of Visitors, 2009 to present
Wesleyan University Alumni Schools Committee, 1991 to 1998
Wesleyan University Binswanger Committee, 2005 to 2007

In addition to the organizations above, I have also made charitable contributions to other organizations that may or may not have considered me a member based solely on those contributions, such as the American Cancer Society, the Boys' and Girls' Club, and other charitable organizations.

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

None of the organizations I have listed above currently discriminates or, to the best of my knowledge, has ever discriminated, on the basis of race, sex, religion or national origin.

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

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

Thoughts from Juror #13, 50 B.B.J. 31 (May/June 2006).

Workplace Crime and Violence, Boston Bar Association Criminal Law Section Newsletter (January 2002).

Daubert Motions in the Criminal Context, Boston Bar Association Criminal Law Section Newsletter (June 2001).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00174 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.147

October 5, 2000 Brown Bag Luncheon: Post-Conviction Motion Practice, Boston Bar Association Criminal Law Section Newsletter (December 2000).

The Cutting Edge: 1999's 10 Most Important Changes in Federal and State Criminal Law, Boston Bar Association Criminal Law Section Newsletter (Spring 2000).

Book Review, The Rage of a Privileged Class by Ellis Cose, 11 Harvard BlackLetter Journal 233 (Spring 1994).

Edited Michael D. Ricciuti and Andrea B. Leczynski, *The Public's Right to Know: Rights and Limitations in Massachusetts Jury Trials*, 51 B.B.J. 6 (September/October 2007).

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

I have searched my files and electronic databases in an effort to locate all reports, memoranda or policy statements that are responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

Getting it Right: Improving the Accuracy and Reliability of the Criminal Justice System in Massachusetts (December 2009), report of the Boston Bar Association's Task Force to Prevent Wrongful Convictions (contributor).

Jury Trial Trends in Massachusetts: The Need to Ensure Jury Trial Competency Among Practicing Attorneys as a Result of the Vanishing Jury Trial Phenomenon (October 2006), report of the Boston Bar Association's Task Force on the Vanishing Jury Trial (contributor).

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

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00175 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.148

about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and electronic databases in an effort to locate all copies, transcripts, recordings or notes that are responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

Introductory Speaker, 14th Annual School Summit: Best Practices for Addressing Bullying, Harassment, Sexting & Aggression, sponsored by Middlesex Partnerships for Youth, Inc. (October 26, 2009).

Introductory Speaker, Sexting, Texting and Cyber Conference, sponsored by the Middlesex District Attorney's Office and Middlesex Partnerships for Youth, Inc. (October 8, 2009).

Introductory Remarks, Middlesex District Attorney's Office Domestic Violence month event (November 9, 2009) (no notes or transcript).

Introductory Speaker, Middlesex Annual Superintendents and Police Chiefs' breakfast, sponsored by the Middlesex District Attorney's Office and Middlesex Partnerships for Youth, Inc. (September 21, 2009).

Presenter, Search Warrant Training for police detectives, sponsored by the Middlesex District Attorney's Office (September 17, 2009 and November 5, 2009).

Guest speaker, "Judicial Solutions" seminar, Tufts University (October 6, 2008). My outline for this talk was substantially the same as the outline for the September 24, 2008 talk at Harvard Law School.

Guest speaker, "Government Lawyer" class, Harvard Law School (September 24, 2008).

Introductory Speaker, 13th Annual School Safety Summit: Youth Violence Prevention, sponsored by the Middlesex District Attorney's Office and Middlesex Partnerships for Youth, Inc. (September 29, 2008).

Panelist, Making a Difference While Making A Living: Public Service Leadership panel, Celebration 55: The Women's Leadership Summit, sponsored by Harvard Law School (September 20, 2008). This panel was audiotaped (CD provided).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00176 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.149

Speaker, Press Conference, Lowell Police Department's Training Institute (regarding the arrests on firearm-related and drug charges of several defendants) (July 18, 2008).

Moderator, Building Better Lawyers: A Symposium Explaining How Diverse Career Paths Shape Legal Careers, sponsored by the Diversity Leadership Task Force of the Boston Bar Association (April 4, 2008).

Panelist, Shifting Gears in Your Legal Career panel, sponsored by the Women of Color subcommittee of the Women's Bar Association (March 19, 2008) (no notes or transcript).

Panelist, District Attorney Leone Speaks panels, Boston College Law School, Boston University School of Law, Northeastern Law School, New England School of Law and Suffolk Law School (various dates: October 30, 2007, November 6, 2007, November 7, 2007, November 5, 2008, November 6, 2008, November 12, 2008, December 8, 2008, November 4, 2009, November 9, 2009, November 10, 2009, November 18, 2009).

Panelist, Panel on Prosecuting Insurance Fraud, sponsored by the New England Association of Insurance Fraud Investigators and New England Chapter of the International Association of Special Investigations Units (June 12, 2007).

Moderator, Strategies for Success for Attorneys of Color panels, sponsored by the Boston Bar Association (July 13, 2005 and July 14, 2004).

Panelist, Strategies for Success for Attorneys of Color panel, sponsored by the Boston Bar Association (July 15, 2003) (no notes).

Moderator, U.S. Probation Speaks panel, sponsored by the Criminal Law Section of the Boston Bar Association (June 3, 2003).

Panelist, Technology in Federal Criminal Trials panel, sponsored by the Criminal Law Section of the Boston Bar Association (April 1, 2003).

Panelist, Annual Women in the Law: Opportunities and Options panel, sponsored by the Women's Bar Association (March 25, 2002 and January 23, 2001) (no notes).

Moderator, Daubert Motions in the Criminal Context panel, sponsored by the Criminal Law Section of the Boston Bar Association (May 1, 2001).

Faculty member, Taking Depositions Workshop, sponsored by the Massachusetts Continuing Legal Education (January 1999) (no notes).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00177 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.150

Earlier in my legal career, in and around 1996-1998, I also participated in several panels or discussion groups organized by the Boston Lawyers' Group (formerly the Boston Law Firm Group), a consortium of law firms and government agencies committed to advancing the diversity of the legal profession in Massachusetts. The audience for these panels were law students or new lawyers and the topic was similar to the "Strategies for Success" panels described above. I do not recall if I had any prepared remarks for these panels and I have been unable to locate any after a diligent search of my files.

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

I have searched my files and electronic databases in an effort to locate all copies of clips or transcripts that are responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

Lisa Shuchman, *Exit Strategies*, Minority Law Journal (and as appearing online at www.law.com) (October 30, 2007).

Boston Bar Association staff, *Member on the Move,* Massachusetts Lawyers Weekly (December 2, 2002).

Mark Shanahan, *Count Her Out*, Boston Globe (March 25, 2008).

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00178 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.151

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

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have not held judicial office.

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00179 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.152

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

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

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

I have not held public office.

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

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

From May to November 1998, I served as a volunteer on the Finance Committee for Martha Coakley's first campaign to become Middlesex District Attorney.

In April 2006, I was a volunteer host of a fundraiser for Gerard T. Leone, Jr.'s campaign for Middlesex District Attorney.

I have not held membership or office in any political party.

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

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

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

From September 1994 to August 1995, I clerked for Justices Edith W. Fine and J. Harold Flannery of the Massachusetts Appeals Court.

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

I never practiced alone.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00180 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.153

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

1995 to 1998
Bingham McCutchen LLP (formerly Bingham, Dana & Gould)
1 Federal Street
Boston, Massachusetts 02110
Associate, Litigation Department

April 1997
Plymouth District Attorney's Office
32 Belmont Street
P.O. Box 6665
Brockton, Massachusetts 02303
Special Assistant District Attorney
(as part of an exchange program
when I worked at Bingham McCutchen LLP)

1999 to 2005
United States Attorney's Office
Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
Deputy Chief,
Organized Crime Drug Enforcement Task Force Unit (2004-2005)
Assistant U.S. Attorney (1999-2005)

2005 to 2007
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215
Instructor, First Year Legal Writing Program

2007 to present
Middlesex District Attorney's Office
15 Commonwealth Avenue
Woburn, Massachusetts 01801
Deputy District Attorney

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

I have never served as a mediator or arbitrator.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00181 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.154

b. Describe:

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

My law practice has focused on litigation. In 1995, my practice began in the Litigation Department of Bingham McCutchen LLP where the bulk of my practice was civil litigation. During my years at Bingham, I spent one month on a rotation at the Plymouth District Attorney's Office as a Special Assistant District Attorney prosecuting criminal cases. When I became a federal prosecutor in 1999, my work changed from civil practice to criminal practice. As an Assistant U.S. Attorney and now as the Deputy District Attorney in Middlesex County, the nature of my legal practice has been almost entirely criminal prosecution. During my time teaching at Boston University School of Law, the curriculum and course was focused on civil litigation practice.

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

During my practice at Bingham McCutchen, the bulk of my clients were corporations, directors and officers of corporations and individuals.

During my practice as a prosecutor, I have represented the United States in federal criminal cases and the Commonwealth of Massachusetts in criminal matters.

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

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 20%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00182 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.155

I have tried eleven trials in federal district court or Massachusetts Superior Court. In addition, I also tried three misdemeanor jury trials (and numerous bench trials) in state district court. For all of these trials, I served as sole counsel or co-counsel.

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

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

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

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

a. the date of representation;

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

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

1. Commonwealth v. Fitzpatrick, Docket No. MICR 2006-1036. Middlesex Superior Court, Justice Kathe M. Tuttman.

This prosecution involved two counts of first degree murder against the defendant for the homicides of his former lover's husband and a co-worker. I became involved in the case in 2007, after the investigation and indictment. We tried the case to a hung jury in July and August 2008. The retrial in January through February 2009 resulted in a conviction on both counts. I participated in the pretrial preparation and trial of the case. I prepared and argued motions in limine and the opposition to the defendant's motion to dismiss. I conducted examinations of approximately half of the government's witnesses including multiple civilians, law enforcement officers and experts (e.g., mother of the victim who had observed the defendant's interaction with her daughter-in-law, the lead Wakefield detective, the fingerprint expert and a forensic expert in image analysis from the Federal Bureau of Investigation). I also handled the jury charge conference and the numerous legal matters that arose during trial.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00183 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.156

My co-counsel was Daniel Bennett, Middlesex County District Attorney's Office, 15 Commonwealth Avenue, Woburn, Massachusetts, (781) 897-8300.

Defense counsel was Randy Gioia, Esq., 151 Merrimac Street, 2nd Floor, Boston, Massachusetts 02114, (617) 367-2480.

2. United States v. de la Cruz, No. 01-CR-10118-REK. United States District Court for the District of Massachusetts, Judge Robert E. Keeton.

The defendant was tried for conspiracy to distribute heroin resulting in an overdose death. I became involved in the case in 2004 and participated in the pretrial preparation of the case and tried this case with co-counsel. The trial began on April 25, 2005 and ran for three weeks. In this jury trial, I conducted the examination of half of the government's witnesses including expert witnesses, cooperating witnesses and law enforcement agents and I gave the closing argument and rebuttal argument. I believe that the defendant's conviction in this case was the first conviction under the Len Bias law for a drug distribution conspiracy resulting in an overdose death in the U.S. District Court sitting in Boston.

My co-counsel was Rachel Hershfang (formerly of the U.S. Attorney's Office), U.S. Securities & Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110, (617) 573-8987.

Defense counsel was Paul Yee, Esq., 10 Tremont Street, Suite 200, Boston, Massachusetts 02108, (617) 722-4343.

3. United States v. Martinez, Docket No. 00-CR-10172-NG. United States District Court for the District of Massachusetts, Judge Nancy Gertner.

The charge against this defendant arose out of a long-term wiretap investigation that spanned several states and involved charges against ten other defendants, a number of whom testified against the defendant in this trial. I became involved in this case in 2001 and handled the pretrial motions and arguments and the cooperation agreements, plea hearings and sentencing hearings for the multiple co-defendants. I conducted the pretrial preparation and served as co-counsel for the trial of the lead defendant on a conspiracy to distribute cocaine charge. The trial began on January 27, 2003 and lasted for approximately three weeks. I conducted the examination of witnesses including expert witnesses, law enforcement agents from Massachusetts and Texas and cooperating witnesses and I gave the closing argument and rebuttal argument. The jury convicted the defendant and found that the defendant derived proceeds of $3 million from his participation in the charged drug distribution conspiracy.

My co-counsel was Rachel Hershfang (formerly of the U.S. Attorney's Office), U.S. Securities & Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110, (617) 573-8987.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00184 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.157

Defense counsel was John LaChance, Esq., 463 Worcester Street, Framingham, Massachusetts 01701, (508) 879-5730.

4. United States v. Hughes, Docket No. 99-CR-10405-REK. United States District Court for the District of Massachusetts, Judge Robert E. Keeton.

In this prosecution, the defendant was charged for his participation in "straw purchases" of firearms. Specifically, the defendant was charged for false statements in a federal firearms application and illegal possession of a firearm. I became involved in the case in 2001 to participate in the pretrial preparation and try the case with co-counsel. The trial began on June 17, 2002, and lasted approximately two weeks. During the trial, I gave the government's opening statement and conducted the examination of witnesses including several civilians, a firearms expert and law enforcement officers. The jury convicted the defendant on all charges.

My co-counsel was Theodore Chuang (formerly of the U.S. Attorney's Office), Department of Homeland Security, Washington, D.C. 20515, (202) 282-8830.

Defense counsel was Miriam Conrad, Federal Defender's Office, Williams Coast Guard Building, 408 Atlantic Avenue, 3rd Floor, Boston, Massachusetts 02210, (617) 223-8061.

5. United States v. Patel, Docket No. 01-CR-10020-RCL. United States District Court for the District of Massachusetts, Judge Reginald C. Lindsay.

I handled the grand jury investigation and presentment as well as the pretrial matters in this arson-for-profit case. I prepared this case for trial twice. The first trial began on September 10, 2001. Our opening statements were interrupted by the news of the attacks on the World Trade Center and the precautionary evacuation of the federal courthouse. In light of the world's state of affairs at the time, the Court declared a mistrial a few days before we had a chance to begin the presentation of evidence. The retrial began on April 29, 2002 and spanned three weeks. I handled the motions in limine, directed the pretrial preparation and handled the examination of half of the government's witnesses including the fire cause and origin expert, forensic auditor and multiple law enforcement officers and civilian witnesses. I also gave the closing argument and rebuttal argument. The jury convicted the defendant on all counts.

My co-counsel was Gregory Moffatt (formerly of the U.S. Attorney's Office), Office of General Counsel, Raytheon Company/Integrated Defense Systems, 50 Apple Hill Drive, M/S T3TQ1, Tewksbury, Massachusetts 01876, (978) 858-9411.

Defense counsel was Ron I. Segal, Esq., Segal Judge & Associates, 23 Central Avenue, Ste. 605, Lynn, Massachusetts 01901. (I believe that Attorney Segal passed away in 2006).

6. United States v. Correia, Docket 00-CR-10246-RWZ. United States District Court for the District of Massachusetts, Judge Rya W. Zobel.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00185 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.158

I became involved in this case in 2001 for pretrial preparation and trial and tried this arson-for-profit trial with co-counsel. The trial began on January 22, 2002 and lasted for two weeks. I gave the government's opening statement and examined a number of the government's experts including an electrical expert, civilian witnesses including the defendant's insurance broker, law enforcement agents and fire department personnel. The jury convicted the defendant on all charges, but the conviction was overturned when the court granted the defendant's post-conviction motion for new trial claiming ineffective assistance of his trial counsel. United States v. Correia, Docket No. 00-10246-RWZ, Memorandum and Order (September 13, 2002), aff'd, Docket No. 02-2313 (1st Cir. October 8, 2003) (unpublished opinion). The case was later retried, but I was not involved in the retrial.

My co-counsel was Gregory Moffatt (formerly of the U.S. Attorney's Office), Office of General Counsel, Raytheon Company/Integrated Defense Systems, 50 Apple Hill Drive, M/S T3TQ1, Tewksbury, Massachusetts 01876, (978) 858-9411.

Defense counsel was James Fagan, Fagan & Goldrick, 26 Dean Street, Taunton, Massachusetts 92780, (508) 824-7000 and William Brown, 112 Milk Street, 2nd Floor, Boston, Massachusetts 02109, (617) 482-1001.

7. United States v. Jones, Docket No. 01-CR-10004-WGY. United States District Court for the District of Massachusetts, Judge William G. Young.

The defendant was charged with being a felon in possession of ammunition. The charge arose out of an incident in which the defendant shot at the boyfriend of a young woman whom the defendant was interested in dating. The firearm was never recovered and the victim and the young woman testified for the government reluctantly. The trial began on September 24, 2001, and lasted approximately one week and ended in a not guilty verdict.

Defense counsel was Martin Richey, Federal Defender's Office, Williams Coast Guard Building, 408 Atlantic Avenue, 3rd Floor, Boston, Massachusetts 02210, (617) 223-8061.

8. United States v. Murphy, Docket No. 00-CR-10293-DPW. United States District Court for the District of Massachusetts, Judge Douglas P. Woodlock.

The charges against the defendant, a vice president of the control division at Putnam Investments, arose out of his theft of funds. We tried him for conspiracy to commit wire fraud and two counts of wire fraud. Trial began on March 19, 2001. I gave the opening statement and examined half of the government's witnesses. After a one-week trial, the jury convicted him on the conspiracy charge.

My co-counsel was Adam Bookbinder, U.S. Attorney's Office, Moakley Courthouse, 1 Courthouse Way, Ste. 9200, Boston, Massachusetts 02210, (617) 748-3112.

Defense counsel was Stephen Jones, Jones, Mulligan & Gerachty, 80 Washington Square, Bldg. K, Norwell, Massachusetts 02061, (781) 871-7600.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00186 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.159

9. United States v. Mourad, Docket No. 99-CR-10200-RCL. United States District Court for the District of Massachusetts, Judge Reginald C. Lindsay.

In this case, the defendant, who owned and operated a low-income housing complex in Boston, was charged with criminal contempt. An investigation revealed that he had been misusing federal funds and as a result, the project went into bankruptcy and a receiver was appointed, thereby removing the defendant. As a result of his disruptive actions during the bankruptcy proceedings, the bankruptcy court issued an order limiting his access to the courthouse. I was the prosecutor assigned to the case and handled all of the pretrial matters and trial preparation. The jury-waived trial began on February 7, 2000, and lasted several days. I also handled the appeal in this matter. The First Circuit affirmed the defendant's conviction. United States v. Mourad, 289 F.3d 174 (1st Cir. 2002).

Defense counsel was Martin Richey, Federal Defender's Office, Williams Coast Guard Building, 408 Atlantic Avenue, 3rd Floor, Boston, Massachusetts 02210, (617) 223-8061.

10. Commonwealth v. Lawler, Essex County Docket No. 9777-CR-2633. Essex Superior Court, Judge Robert A. Barton.

As part of an exchange program between Bingham McCutchen LLP and the Essex District Attorney's Office, I served as a Special Assistant District Attorney for this Superior Court trial. I served as the second-seat of this June 1998 trial of the defendant for breaking and entering and arson of a trailer home located in a campground in Salisbury. I examined numerous witnesses in this trial. The defendant chose to plead guilty on June 11, 1998 before the case was submitted to the jury.

Lead counsel was (formerly an Assistant District Attorney and now the Honorable) Dunbar Livingstone, Justice, District Court, Salem Division, 65 Washington Street, Salem, Massachusetts 01970, (978) 744-4681, ext. 3029.

Defense counsel was Andrew Benson, P.O. Box 386, Amesbury, Massachusetts 01913, (978) 373-1123.

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

While in private practice, I handled complex litigation in various areas including products liability, insurance and labor and employment. These matters most often involved the representation of corporations and/or corporate officers and directors and disputes involving millions of dollars in alleged damages. Most of these matters resolved short of

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00187 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.160

trial, but involved extensive discovery, settlement negotiations, dispositive motions and/or appeals.

As an Assistant U.S. Attorney, I handled pretrial, grand jury, trial, sentencing and appellate matters in the prosecution of numerous cases including but not limited to arson, bank robbery, fraud, firearm offenses and multiple-defendant drug trafficking and importation cases. I also handled the investigation, grand jury presentment and resolution of several large scale matters, a number of which involved multiple Title III wiretaps, multiple search warrants and other investigative means, coordination with law enforcement agents and prosecutors in multiple jurisdictions and resulted in charges against multiple defendants and, in a few cases, several international extraditions. Although I tried some of these cases as discussed above, most of these matters resolved short of trial. In my capacity as Deputy Chief of the Organized Drug Enforcement Task Force, I oversaw other Assistant U.S. Attorneys and reviewed and approved charging documents, initiation of criminal investigations, plea agreements, immunity orders and other matters. During my years at the U.S. Attorney's office, I also served as one of the attorneys working with middle school students in the annual Citizens' School Mock Trial program.

In my current role as Deputy District Attorney, I serve as second in command to the District Attorney and aid the District Attorney in running an office of over 240 employees including over 100 Assistant District Attorneys. I set officewide policy regarding cases and investigations as well as personnel and administrative matters. I oversee the supervisors of Superior Court trial teams, the Appeals and Training Bureau and the office's PACT Unit (a specialized unit that investigates and prosecutes public corruption, organized crime and financial crimes), the officewide grand jury coordinator and both the heads of the office's Victim Witness Bureau and the Cyber Protection Program. I review and approve direct indictment requests, charge breakdowns and other critical case matters and provide legal advice. I also serve as the District Attorney's legal counsel, advising him on a variety of legal matters. Another one of my responsibilities is acting as the office's liaison to the Regional Administrative Justice (for criminal matters) for the Middlesex Superior Court. I also handle cases including a double homicide trial and appellate matters including a recent matter before the Supreme Judicial Court, Commonwealth v. Vick, 454 Mass. 418 (2009), which settled the standard for determining whether convictions stemming from a single criminal episode are duplicative.

In the course of my career as a federal and state prosecutor, I have also handled and briefed twelve appellate matters. Most of these briefs were for the U.S. Court of Appeals for the First Circuit, but some were for matters before the Massachusetts Appeals Court and the Supreme Judicial Court. Of the twelve matters that I briefed, I have done the oral arguments in seven of the cases.

I have not performed any lobbying activities.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00188 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.161

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

I served as an Instructor at Boston University School of Law teaching students in the First Year Legal Writing Program from 2005 to 2007.

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

None.

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

I do not have any plans, commitments or agreements to pursue outside employment if I am confirmed as a district judge.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00189 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.162

Potential conflicts of interest may arise in regard to cases that I handled while I was an Assistant United States Attorney or which I supervised, reviewed or expressed an opinion about as the Deputy Chief of the Organized Crime Drug Enforcement Task Force in the United States Attorney's Office. Since, however, I left the United States Attorney's Office in 2005, I expect that the number of cases that would present this conflict of interest would be small. In addition, there are a number of entities in which I (and/or my husband and children) have a financial interest. Several of these financial interests are in entities to which my husband also has a fiduciary obligation. I would be vigilant about potential conflicts by examining a matter assigned to me to uncover promptly any potential conflicts arising from these relationships.

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

I would resolve any potential conflict of interest by adhering to 28 U.S.C. section 455, the Code of Conduct for United States Judges and all applicable policies and procedures of the United States courts. I would recuse myself in any matter in which my spouse or I hold a financial interest or have a sufficiently close connection with counsel or the parties (business or social). In the event of uncertainty, I would err on the side of disqualification.

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

During my years in private practice at Bingham McCutchen, I worked on a number of pro bono matters. In the course of my years as a prosecutor, my primary contribution to serving the public interest was my day-to-day work representing the people of the federal District of Massachusetts and now the citizens of Middlesex County. However, even during these latter years, I participated as one of the attorneys working with middle school students in the annual Citizens' School Mock Trial program and served on two boards of organizations that provided pro bono legal services, the Volunteer Lawyers' Project (1998 to 2004) and the Women's Bar Foundation (2000 to 2008).

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00190 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.163

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In June 2009, the late U.S. Senator Edward M. Kennedy announced that a twelve-person search committee in Boston would consider applications for the vacancy on the U.S. District Court for the District of Massachusetts created by the death of the Honorable Reginald Lindsay. I submitted an application on July 9, 2009. I was interviewed by the search committee on August 13, 2009. On October 21, 2009, the search committee informed me that the committee had voted to forward my name to U.S. Senator John Kerry. On November 30, 2009, Senators Kerry and Kirk interviewed me. On January 17, 2010, Senator Kerry informed me that he was recommending me to President Obama for nomination for this judicial seat.

Since January 18, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On March 5, 2010, I had an interview with Department of Justice and White House personnel in Washington, D.C. I was nominated by the President on April 28, 2010.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00191 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.164

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Casper, Denise J.	U.S. District Court for the District of Massachusetts	04/26/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge- Nominee	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 4/28/2010 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 1/1/2009 to 3/31/2010
7. Chambers or Office Address Middlesex District Attorney's Office 15 Commonwealth Avenue Woburn, Massachusetts 01801	**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. Trustee	Trust #1
2. Director	Big Sister Association of Greater Boston, Inc.
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting	Date of Report
	Casper, Denise J.	04/26/2010

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	Middlesex District Attorney's Office, wages	$28,424.00
2. 2009	Middlesex District Attorney's Office, wages	$110,250.00
3. 2008	Middlesex District Attorney's Office, wages	$110,250.00
4. 2008	Harvard Law School Wasserstein Fellowship, Honorarium	$500.00

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

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

DATE	SOURCE AND TYPE
1. 2009-2010	Thermo Fisher Scientific- Wages
2. 2009	Advisory Board Company- Board of Directors Fees
3. 2009-2010	Zimmer Holdings- Board of Directors Fees
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Casper, Denise J.	Date of Report 04/26/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 11

Name of Person Reporting	Date of Report
Casper, Denise J.	04/26/2010

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date 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)
1. Metropolitan Life Insurance Annuity	D	Distribution			Exempt				
2. Bank of America Bank accounts	D	Interest	O	T					
3. Fidelity Bank Account	A	Interest	L	T					
4. Goldman Sachs Bank Account	A	Int./Div.	N	T					
5. Vanguard Tax Free Money Market	C	Int./Div.	P1	T					
6. United States Savings Bonds	A	Interest	J	W					
7. Thermo Fisher Common Stock		None	P1	T					
8. Thermo Fisher Stock Options		None	P2	T					
9. Thermo Fisher Restricted Stock		None	N	T					
10. Thermo Fisher Restricted Stock Units		None	P2	T					
11. Trust #1 assets listed with-- below									
12. --Goldman Sachs High Yield Mutual Fund	C	Int./Div.	L	T					
13. --Goldman Sachs Municipal Income Mutual fund	C	Int./Div.	L	T					
14. --Standard and Poors 500 Depository Receipts Mutual Fund	B	Dividend	L	T					
15. --Goldman Sachs Emerging Markets Equity Fund GEMIX	A	Dividend	K	T					
16. --Goldman Saches Short Duration Tax Free Mutual Fund	B	Int./Div.	L	T					
17. Goldman Sachs 1% 10/20/2014 Linked 10 yr notes- Bond	A	Int./Div.	M	W					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 11

Name of Person Reporting	Date of Report
Casper, Denise J.	04/26/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
18. Goldman Sachs Institutional LI Assets Fed Portfolio Fund	A	Interest	N	T					
19. GS Investment Grade Credit Fund A	D	Int./Div.	M	T					
20. GS Hedge Fund Opportunities 2007 limited partnership	B	Int./Div.	N	W					
21. GS Short Duration T/F Mutual Fund Class A	B	Int./Div.	L	T					
22. Kentucky St Propoerty & Bldg Rev 5.375% 10/1/18 bond	D	Interest	M	T					
23. NJ Trans TR FD Auth Rev 5% 12/15/18 bond	C	Interest	L	T					
24. Chicago IL GO 5% 12/1/19 bond	C	Interest	M	T					
25. Greene Cnty Ohio SWR Sys rev 5.625% 12/1/20 bond	D	Interest	M	T					
26. Kansas Dept of Trans Rev 5% 9/1/22 bond	C	Interest	M	T					
27. Detroit MI Sch Dist GO 5.375% 5/1/24 bond	D	Interest	M	T					
28. Univ Mass Bldg Auth Proj Rev 5.25% 11/1/26 bond	D	Interest	M	T					
29. Univ Mass Bldg Auth Rev 5.5% 11/1/10 bond	D	Interest	M	T					
30. City of Houston, TX Rev 5.25% 5/15/11 bond	D	Interest	M	T					
31. Comm of Mass Gen Oblig Ref BDS 1/1/12 bond	D	Interest	M	T					
32. Mass Water Pollution Rev 5.5% 8/1/12 bond	D	Interest	M	T					
33. City of Boston GO 5% 1/1/13 bond	B	Interest	L	T					
34. Pittsfield MA GO 5.5% 4/15/14 bond	D	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	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 6 of 11

Name of Person Reporting	Date of Report
Casper, Denise J.	04/26/2010

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date 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)
35. District of Columbia GO 5% 6/1/14 bond	C	Interest	L	T					
36. Mass GO 5% 8/1/14 bond	C	Interest	M	T					
37. Mass IB 5.375% 1/1/16 bond	D	Interest	M	T					
38. Birmingham AL GO 5.25% 5/1/17 bond	D	Interest	M	T					
39. Mass Water Re Authority 5.25% 8/1/17 bo nd	D	Interest	M	T					
40. Seattle WA Rev 5% 2/1/18 bond	D	Interest	M	T					
41. Mass Health & Ed Rev 6% 7/1/35 bond	D	Interest	M	T					
42. Vontobel Non US Equity LLC limited part nership		None	N	T					
43. Noble Corp common stock	A	Dividend	L	T					
44. Potash Corp common stock	A	Dividend	L	T					
45. Charles Schwab Deposit Account	A	Interest	J	T					
46. Dodge & Cox Intl Stock Fund	A	Int./Div.	L	T					
47. IBOXX High Yield-HYG mutual fund		None	K	T					
48. SPDR Barclays High Yield-JNK mutual fun d		None	K	T					
49. Vanguard Bond Index ETF-BSV mutual f und	A	Int./Div.	J	T					
50. Western Asset Bond Fund	C	Int./Div.	O	T					
51. Dodge & Cox Stock Fund	A	Int./Div.	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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 7 of 11

Name of Person Reporting	Date of Report
Casper, Denise J.	04/26/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
52. ssga S&P 500 Index mutual fund	A	Int./Div.	L	T					
53. TRowe Price Growth Fund	A	Int./Div.	K	T					
54. Vanguard Mid Cap Fund	A	Int./Div.	K	T					
55. Jennison Small Cap Growth Fund	A	Int./Div.	J	T					
56. Zimmer Holdings Restricted Stock		None	M	T					
57. Zimmer Holdings Common Stock		None	L	T					
58. Comcast Holdings common stock	B	Dividend	K	T					
59. Exxon Mobil Corp common stock	A	Dividend	J	T					
60. Peoples United Fnl common stock	B	Dividend	K	T					
61. Merrill Lynch Cash Card Services mutual fund	A	Interest	L	T					
62. Blackrock- MDSRX mutual fund	A	Dividend	K	T					
63. Vanguard Sh Tm bond-BSV mutual fund	B	Int./Div.	L	T					
64. Bain Capital Fund VIII limited partnership	A	Int./Div.	N	W					
65. Bain Capital AIV Loews II limited partnership	A	Int./Div.	J	W					
66. Bain Capital Tru VIII limited partnership	A	Int./Div.	K	W					
67. Bain Capital VII limited partnership	A	Int./Div.	L	W					
68. Bain Capital VI limited partnership	A	Int./Div.	K	W					

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 11

Name of Person Reporting	Date of Report
Casper, Denise J.	04/26/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
69. Bain Venture Fund 2001 limited partnership	A	Int./Div.	L	W					
70. Special Opportunities Fund IV limited partnership	A	Int./Div.	M	W					
71. Special Opportunities Fund III limited partnership	A	Int./Div.	N	W					
72. Water Street Healthcare Partners, Limited Partnership	A	Int./Div.	P1	W					
73. Water Street Healthcare Partners II, Limited Partnership	A	Int./Div.	M	W					
74. Altor Common Stock		None	J	W					
75. TPG Fund V limited partnership	A	Int./Div.	M	W					
76. TPG Fund VI limited partnership	A	Int./Div.	K	W					
77. Esplanade Capital limited partnership	A	Int./Div.	N	T					
78. Pine Cobble Capital limited partnership	A	Int./Div.	O	T					
79. Bd of Jt advisors-Banc One Equity limited partnership		None	J	W					
80. Charlesbank Capital Partners limited partnership	A	Int./Div.	J	W					
81. Dominos Pizza common stock		None	J	T					
82. Cook Cty GO 5.00% bond	B	Interest	L	T					
83.									
84.									
85.									

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

FINANCIAL DISCLOSURE REPORT Page 9 of 11	**Name of Person Reporting** **Casper, Denise J.**	**Date of Report** 04/26/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86.									

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

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting	Date of Report
	Casper, Denise J.	04/26/2010

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

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting	Date of Report
	Casper, Denise J.	04/26/2010

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 Denise Jefferson Casper

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	2	401	748	Notes payable to banks-secured			
U.S. Government securities-add schedule		10	000	Notes payable to banks-unsecured			
Listed securities-add schedule	30	908	167	Notes payable to relatives			
Unlisted securities--add schedule	5	094	330	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	7	300	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		782	500				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			0
				Net Worth	46	496	745
Total Assets	46	496	745	Total liabilities and net worth	46	496	745
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a 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	
U.S. Savings Bonds	$ 10,000
Listed Securities	
Investment Account 1	
Thermo Fisher Scientific Common Stock	1,817,528
Goldman Sachs Investment Grade Credit Fund	140,740
Goldman Sachs High Yield Mutual Fund	62,689
Goldman Sachs Municipal Income Mutual Fund	80,419
Standard & Poors Depository Receipts Mutual Fund	79,560
Goldman Sachs Emerging Markets Equity Fund	17,154
Goldman Sachs Short Duration T/F Mutual Fund	50,870
Goldman Sachs 1% 10/20/2014 Linked to 10 Yr CMS bond	100,824
Univ Mass Bldg Auth Proj Rev 11/1/10 bond	128,418
Comm of Mass Gen Oblig Ref Bds GO 1/1/12 bond	161,868
Mass Water Pollution Rev 8/1/12 bond	5,070
City of Boston, MA GO 1/1/13 bond	55,194
Pittsfield Mass GO 4/15/14 bond	162,364
District of Columbia GO 6/1/14	84,684
Mass GO 8/1/14 bond	113,480
Mass IB 1/1/16 bond	138,390
Mass Water Res Auth 8/1/17 bond	116,020
Seattle Wash Wtr Sys 2/1/18 bond	169,096
Kentucky St Property & Bld 10/1/18 bond	213,772
NJ Trans Tr FD 12/15/18 bond	82,576
Chicago GO 12/1/19 bond	107,338
Kansas Dept of Trans Rev 9/1/22 bond	111,832
Mass Health & Edu Rev 7/1/35 bond	102,430
City of Houston TX Rev 5.25% 11/1/10 bond	105,198
Birmingham AL GO 5.25% 8/1/17 bond	162,636
Greene Cty Ohio Swr Sys Rev 12/1/20	159,708
Detroit Michigan Sch Dist GO 5.375% 5/1/24 bond	111,824
Univ Mass Bldg Auth Proj Rev 11/1/26 bond	231,740
Cook County IL 12/1/12 bond	82,570
Dominos Pizza common stock	8,278

Investment Account 2	
Noble Corporation common stock	24,420
Potash Corporation common stock	21,969
Thermo Fisher Scientific common stock	1,245,992
Thermo Fisher Scientific stock options	11,179,992
Thermo Fisher Scientific restricted stock	488,670
Thermo Fisher Scientific restricted stock units	11,012,000
401K	
Dodge & Cox stock fund	78,473
Dodge & Cox International stock fund	50,446
SSGA S&P 500 Index Fund	10,443
Western Asset Bd Fund	107,296
IRA #1	
Deposit Accounts	5,495
Dodge & Cox Intl stock fund	8,389
Iboxx High Yield Corp Bond fund	26,511
Spdr Barclays High Yield Bond ETF fund	11,937
Vanguard Bond Index Fund ETF fund	8,000
Noble Corp common stock	27,183
Potash Corp common stock	23,870
IRA #2	
ML Bank USA mutual fund	89,582
Comcast Holdings common stock	21,800
Exxon Mobil common stock	13,396
Peoples United Financial common stock	31,240
Thermo Fisher Scientific common stock	61,728
Blackrock S&P 500 mutual fund	24,974
Vanguard Short Term Bond fund	76,000
Misc. Investments	
Zimmer Holdings restricted stock	135,170
Zimmer Holdings common stock	61,304
Thermo Fisher Scientific common stock ESPP Plan (3146 sh)	166,738
Advisory Board Company Stock Options	-
Newport Deferred Compensation Plan	
Western Asset Bd Fund	443,314
Dodge & Cox stock fund	145,655
SSGA S&P index fund	95,232
Trowe Price Growth Fund	65,798
Dodge & Cox International stock fund	112,596
Vanguard Mid Cap fund	48,817

Jennison Small Cap Growth Fund	19,467
Total Listed Securities	30,908,167
Unlisted Securities	
Goldman Sachs Hedge Fund Opportunities 2007 limited partnership	$ 462,600
Vontobel Non US Equity LLC limited partnership	370,000
Bain Capital Fund VIII limited partnership	470,045
Bain Capital AIV Loews II limited partnership	5,526
Bain Capital Tru VIII limited partnership	48,789
Bain Capital VII limited partnership	99,995
Bain Capital VI limited partnership	23,702
Bain Venture Fund 2001 limited partnership	73,194
Special Opportunities Fund IV, LP	135,399
Special Opportunities Fund III, LP	442,039
Water Street Healthcare Partners, LP	1,151,974
Water Street Healthcare Partners II, LP	170,505
Altor Common Stock	10,000
TPG Fund V limited partnership	250,000
TPG Fund VI limited partnership	47,000
Esplanade Capital limited partnership	495,447
Pine Cobble Capital limited partnership	824,505
Bd of Joint Advisors-Banc One Equity limited partnership	6,000
Charlesbank Capital Partners limited partnership	7,610
Total Unlisted Securities	5,094,330
Real Estate Owned	
Personal residence	$ 4,300,000
Seasonal residence	3,000,000
Total Real Estate Owned	7,300,000

AFFIDAVIT

I, Denise Jefferson Casper, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 27, 2010
(DATE)

Denise Jefferson Casper
(NAME)

JEANMARIE CATALDO
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
October 24, 2014

(NOTARY)

STATEMENT OF CARLTON W. REEVES, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Mr. REEVES. Thank you, Mr. Chairman and Ranking Member Mr. Kyl.

On behalf of me and my family, I want to thank the President for nominating me for this job. This is his first nomination for the State of Mississippi.

I do thank Senator Cochran and Senator Wicker for their kind words and the bipartisan nature in which they have come together with Congressman Thompson, whom I have known for more than 25 years as a student at Jackson State University, interning in his office, and he, obviously, saw something in me and has stuck with him from that day to this one.

If I may, Senator, I'd like to introduce my family here today.

Senator DURBIN. Please.

Mr. REEVES. I have my wife, Lora Reeves, and my daughter, Chanda Reeves. My mother is here today, Wilhelmina Reeves. My sisters are here, Terri Reeves Hansberry and Christy Reeves. And Terri has brought her daughters, DeAnna Parker, Paige Reeves, and Hope Reeves.

And my mother's friend of over 60 years, from Yazoo City, Mississippi, is also here, Ms. Winnie Stanton, who lives in the area now.

I have siblings who, unfortunately, were not able to be here, Carolyn Reeves and her husband, Ernest, Tony Reeves, and Calvin Reeves. They've all supported me.

Now, those who are at home, I know, who are watching the Webcast and for the old ladies who probably are not watching the Webcast, but are hearing about it, my aunt, Hannah, who is approaching her 94th birthday, I believe, great aunt; and, my aunt, Mug, who we call Modest Paige, who was like our grandmother.

I have dozens and dozens of nieces and nephews. I have in-laws who are supporting me, Catherine Singleton, and my law partners. We have a three-man law firm back home; Brad Pigott, former U.S. attorney. His son is here representing his family, Chris Pigott. And Cliff Johnson, who is working hard today.

There are others in my family who could not be here, but they're watching over me. My father, a retired military man of over 30 years, First Sergeant Jesse W. Reeves. My uncle, Pete, who was like my grandfather, he's not here. And I have brothers, Andrew Taylor and Jesse Reeves, Jr.

It's special, because when I got the call on January the 21st that the Department of Justice thought that I might be considered, that was 10 days after Jesse was buried, and tomorrow would be Jesse's 55th birthday. So this is his birthday present.

And I thank the Senate. And there's one other person who I know is watching over me, and that's my mother-in-law, Annie Brown Moseley, who is no longer with us, as well.

As I looked around the room when I walked in and when I came up, I saw several people from Yazoo City, Mississippi who are also here, and I certainly appreciate their support.

Thank you for your time and I appreciate it.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00207 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Carlton Wayne Reeves

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

   United States District Judge for the Southern District of Mississippi

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

   Office: 775 North Congress Street
   Jackson, Mississippi 39202

   Residence: Terry, Mississippi

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

   1964; Fort Hood, Texas

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

   1986-1989, University of Virginia School of Law; J.D., 1989
   1982-1986, Jackson State University; B.A. (*magna cum laude*), 1986

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

   2006-Present
   Pigott Reeves Johnson, P.A.
   775 North Congress Street
   Jackson, Mississippi 39202
   Shareholder

66720.180

2007-Present
Fifth Chancery Court District of Mississippi
316 South President Street
Jackson, Mississippi 39201
Hinds County Family Master

2001-2006
Pigott Reeves Johnson & Minor, P.A.
775 North Congress Street
Jackson, Mississippi 39202
Shareholder

1995-2001
United States Department of Justice
United States Attorney's Office for the Southern District of Mississippi
188 East Capitol Street, Suite 500
Jackson, Mississippi 39201
Assistant United States Attorney, Chief of the Civil Division (1995-2001)
District Election Officer (1998-2001)

1994
Mississippi College School of Law
151 East Griffith Street
Jackson, Mississippi 39201
Adjunct Faculty

1991-1995
Phelps Dunbar, L.L.P
111 E. Capitol Street, Suite 600
Jackson, Mississippi 39201
Associate

1992
Jackson State University
1400 J.R. Lynch Street
Jackson, Mississippi 39217
Adjunct Faculty

1989-1991
Mississippi Supreme Court
450 High Street
Jackson, Mississippi 39201
Staff Attorney (1991)
Law Clerk (1989-1990)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00209 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.181

1989
Hinds County Board of Supervisors
316 South President Street
Jackson, Mississippi 39201
Researcher

1988
Ferguson Stein Chambers Gresham & Sumter
714 Kenilworth Avenue, Suite 300
Charlotte, North Carolina 28204
Summer Associate/Law Clerk

1987
ACLU of Mississippi
P. O. Box 2242
Jackson, Mississippi 39225
Summer Law Clerk

Other Affiliations (uncompensated except as indicated)

2009-Present
Jackson State University Investment Management Committee
1400 John R. Lynch Street
Jackson, Mississippi 39217
Member

2008-Present
College Savings Plans of Mississippi
Mississippi Treasury Department
501 North West Street, Suite 1101
Jackson, Mississippi 39201
Board Member

2005-Present
Community Foundation of Greater Jackson
525 East Capitol Street
Jackson, Mississippi 39201
Trustee

2004-Present
College Hill Missionary Baptist Church
1600 Florence Avenue
Jackson, Mississippi 39204
Trustee

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00210 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.182

2003-Present
Mississippi Center for Justice
5 Old River Place, Suite 203
Jackson, Mississippi 39202
Board Member

2001-Present
North Congress Properties, LLC
775 N. Congress Street
Jackson, Mississippi 39202
Partner (compensated)

2006-2010
Mississippi Workers Center for Human Rights
213 Main Street
Greenville, Mississippi 38701
Board Member (2006-2010)
Treasurer (2008-2010)

1993-2009
ACLU of Mississippi
753 North Congress Street
Jackson, Mississippi 39202
Board Member (1993-1995; 2002-2009)
Affirmative Action Officer (2002-2009)

2007-2008 & 1996-1998
Magnolia Bar Association, Inc.
2115 W. Capitol Street
Jackson, Mississippi 39209
President (2007-2008)
President-elect (2006-2007)
Secretary (2005-2006)
Board of Directors (1996-1998 & 2005-2008)

2007-2008
Springwood Acres Homeowners Association
Route 1 Box 606, South Springlake Circle
Terry, Mississippi 39170
Board of Directors

2001-2006
United States Commission on Civil Rights, Central Regional Office
Suite 908, 400 State Avenue
Kansas City, Kansas 66101
Member, Mississippi Advisory Committee

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00211 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.183

1998-2005
Magnolia Bar Foundation, Inc.
2115 W. Capitol Street
Jackson, Mississippi 39209
Board Member (1998-2002)
President (2003-2005)

1994-2004
Mississippi Legal Services (formerly Central Mississippi Legal Services)
414 S. State Street
Jackson, Mississippi 39201
Board Member

1996-1999
Mississippi Board of Bar Commissioners
643 N. State Street
Jackson, Mississippi 39202
Commissioner

1993-1996
Jackson Urban League
2310 Highway 80 West
Jackson, Mississippi 39204
Board Member

1991-1995
Madison Yazoo Leake Family Health Center
1668 West Peace Street
Canton, Mississippi 39046
Board Member

1992-1995
Kids Care, Inc.
5045 Clinton Boulevard
Jackson, Mississippi 39209
Board Member

1995
Southwest YMCA
1950 Flowers Avenue
Jackson, Mississippi 39204
Board Member

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00212 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.184

1992-1994
Mississippi Capital Defense Resource Center
151 E. Griffith Street
Jackson, Mississippi 39201
Board Member

1990-1994
Metropolitan Leadership Council
P. O. Box 22567
Jackson, Mississippi 39225
Board Member

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

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

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

Campaign Champion, The Campaign for Jackson State University (2009)
Fellow, Mississippi Bar Foundation (2009)
Brown, Young & Hall Award, Jackson Branch NAACP (2007)
Named as "Mid-South Super Lawyer", Super Lawyers Magazine (2006)
President's Award, Magnolia Bar Association (2005)
Alfred H. Rhodes, Jr., Service Award, Magnolia Bar Association (2005)
Life Member, Jackson State National Alumni Association (2005)
Member, President Club, Jackson State University (2004)
Curtis E. Coker Access to Justice Award, Mississippi State Bar Association (2003)
Pro Bono Award, Hinds County Bar Association (2002-2003)
Silver Life Member, NAACP (2003)
R. Jess Brown Award, Magnolia Bar Association (2002)
Named one of "Top 40 Under 40", Mississippi Business Journal (2002)
Certificate of Commendation, Civil Rights Division, U.S. Department of Justice (2000)
Letter of Commendation, U.S. Department of Agriculture (2000)
Letter of Appreciation, Federal Bureau of Investigation (1999)
Letter of Appreciation, U.S. Postal Service (1997)
Letter of Appreciation, U.S. Department of Army (1997)
Letter of Commendation, Social Security Administration (1996)
Letter of Appreciation, U.S. Consumer Product Safety Commission (1995)
Mary Claiborne and Roy H. Ritter Fellowship in Recognition of Outstanding Honor, Character, Integrity, University of Virginia School of Law (1989)
CLEO (Council on Legal Education Opportunity) Fellow (1986)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00213 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.185

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

American Bar Association Death Penalty Moratorium Implementation Project
    Mississippi Assessment Team
American Trial Lawyers Association
Central Mississippi Legal Services, Board of Directors (1994-2003)
Charles Clark Inns of Court
    Associate (1992-1995)
    Public Service Barrister (1996-2000)
    Public Service Bencher (2000-2001)
    Private Bencher (2001-2010)
Executive Office for United States Attorneys, U.S. Department of Justice
    Civil Chiefs Working Group
Federal Bar Association, Mississippi Chapter
Fifth Circuit Bar Association
Hinds County Bar Association
Magnolia Bar Association
    Board of Directors (1996-1998 & 2005-2008)
    Central District Director (1996-1998)
    Chair, Scholarship & Awards Committee (1999-2000)
    Secretary (2005-2006)
    President-elect (2006-2007)
    President (2007-2008)
Magnolia Bar Foundation, Inc.
    Board of Directors (1998-2002)
    President (2003-2005)
Mississippi Access to Justice Commission
Mississippi Bar Association
Mississippi Board of Bar Commissioners
    Commissioner (1996-1999)
Mississippi College School of Law
    Dean's Advisory Board for Minority Affairs (2008-Present)
Mississippi Legal Services, Board of Directors (2003-2004)
Mississippi Judicial Study Commission
    Terms and Case Management Subcommittee, Chair (2001-2002)
Mississippi Trial Lawyers Association
National Bar Association
United States District Court for the Southern District of Mississippi
    Magistrate Judge Merit Selection Panel (2005-2006)

10. **Bar and Court Admission**:

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00214 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.186

Mississippi, 1989

There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Fifth Circuit, 1989
United States District Court for the Northern District of Mississippi, 1989
United States District Court for the Southern District of Mississippi, 1989
Mississippi State Courts, 1989

There have been no lapses in membership.

11. **Memberships**:

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

Terry High School Basketball Booster Club (2008-Present)
Kappa Alpha Psi Fraternity, Inc., Jackson Alumni Chapter (2008- Present)
Jackson State University
Capital Campaign Committee (2005-Present)
W.E.B. DuBois Honors College Advisory Board (2007)
Springwood Acres Homeowners Association (1999-Present)
Board of Directors (2007-2008)
Jackson State University National Alumni Association (1990-Present)
ACLU of Mississippi (1993-2009)
Affirmative Action Officer (2002-2009)
Cornerstone Society, WJSU 88.5 FM (2006-2007)
Metropolitan Leadership Council (1990-1994)

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00215 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.187

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Kappa Alpha Psi Fraternity is a service and social fraternity which includes undergraduate college chapters and alumni chapters. Its membership is restricted to males. The fraternity's community programs, however, are open to all. I have taken no steps to ensure that the membership be expanded to include women.

To the best of my knowledge, none of the other groups and organizations listed above has ever discriminated against any group. They currently do not discriminate nor did they discriminate during the time I was a member.

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

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

This list represents the published material I have identified through searches of my files and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

"Election of Judges," *The Mississippi Lawyer*, Fall 2008
"From the President," *Magnolia Bar Association Newsletter*, May 2008
"Letter to Editor," *Clarion Ledger*, (April 3, 2008)
"New Federal Courthouse in Jackson Should Honor R. Jess Brown," *Clarion Ledger*, (May 21, 2007)
"*Litigating Civil Rights Cases in the New Millennium*," Magnolia Bar 21st Annual CLE Program, (2002)
"*Redistricting: State of Law 2001*," McDonald & Reeves, *Magnolia Bar Magazine*, Vol. 1, No. 3 (January/February 2002)
Rules 4(i) & 4(m): Getting the United States in Court, Eleventh Annual Federal Practice and Procedure Seminar, The Federal Bar Association and the University of Mississippi Center for Continuing Legal Education (April 25, 1997)
"*False Claims Act Enforcement: A Role for the Local Bar*," Reeves and Paige, Magnolia Bar Association Annual CLE (1996)
"The Use of Legal Assistants/Paralegals in the Practice: Why We Need Them," Magnolia Bar Association, CLE, (1993)
Operations Manual Update, Mississippi Municipal Association (MMA), Anderson & Reeves, (approximately 1991)
"Letter to Editor," *Cavalier Daily*, University of Virginia, (October, 1988)

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00216 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.188

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

This list represents the reports, memoranda and policy statements I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued statements with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Study Commission on the Mississippi Judicial System: Report to the Mississippi Legislature, December 2001.

Mississippi Access to Justice Commission: Annual Report to the Supreme Court of Mississippi, December 22, 2008.

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

This list represents the testimony, official statements and other communications relating to matters of public policy or legal interpretation that I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued communications with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Magnolia Bar Association's Endorsement of Senator Barack Obama for President, March 7, 2008

Statement of the Magnolia Bar Association, *On the Life of Charles W. Tisdale*, July 16, 2007

Letter to Senator Patrick Leahy, Chairman, Senate Judiciary Committee, *Regarding the Nomination of Leslie Southwick*, May 30, 2007

Letter to Senator Thad Cochran, *Regarding Judicial Vacancy in Mississippi and the need to consider African-American for the Appointment*, March 23, 2007

Letter to Senator Trent Lott, *Regarding Judicial Vacancy in Mississippi and the need to consider African-American for the Appointment*, March 23, 2007

Letter to Senators Arlen Specter, Chairman, Senate Judiciary Committee, Patrick Leahy, Ranking Member, *Regarding the Nomination of Michael Wallace*, August 1, 2006

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00217 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.189

OpEd, Jaribu Hill, President, Magnolia Bar Association, *Magnolia Bar Association Opposes Nomination of Michael Wallace to the Fifth Circuit Court of Appeals,* May, 2006

OpEd, Tylvester Goss, President, Magnolia Bar Association, *Chief Justice's Court Proposal Dead Wrong,* March, 2006

Resolution, *Magnolia Bar Association Mourns the Passing of Mrs. Corretta Scott King*, January 31, 2006

Press Release, *Magnolia Bar Association Opposes Appointment of Special Circuit Judges in Hinds County*, (January 30, 2006)

Statement of the Magnolia Bar Association, *Regarding Naming of New Federal Courthouse in Honor of R.J. Brown*, January, 13, 2006

Statement of the Magnolia Bar Association, *Regarding Judge Marcus Gordon's Decision to Allow Edgar Ray Killen to Go Free*, August 18, 2005

Press Release of the Magnolia Bar Association, *Regarding the Edgar Ray Killen Trial; Senators Trent Lott & Thad Cochran*, June 23, 2005

Press Release, *Democratic Activists Criticize Republican Court Appeal Seeking At Large Congressional Elections*, May 14, 2002

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

This list represents the presentations I have identified through searches of my files and internet databases and discussions with others to help refresh my memory. I serve and have served on multiple bar association committees and non-profit boards and in these capacities have frequently participated in public event. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

September 23, 2009: Discussant at program on Greeks learning to avoid Debt, Kappa Alpha Psi, Delta Delta Chapter, Jackson State University, Dolly M. E. Robinson College of Liberal Arts, Lecture Room 166/266. No notes are available.

February 2009: Delivered a talk before the Mississippi Democratic Club on the merits of Voter I.D. legislation which was pending in the Mississippi Legislature. The meeting was held at the Jackson Municipal Art Gallery, 839 North State Street, Jackson, Mississippi. No notes are available.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00218 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.190

December 2008: Panel Discussion, *"Is There a Better Way of Selecting Judges?"* The League of Women Voters of Mississippi and Common Cause of Mississippi, Jackson, Mississippi. No notes are available, but I have included press reports about the debate.

November 2008: Moderator, "Bridging the Communication Gap: A Dialogue on Policy and Legislative Agenda," Mississippi NAACP and Mississippi Black Leadership Summit. I have no notes or transcripts of this event.

November 3, 2008: Press Conference of various groups – ACLU of Mississippi; Mississippi State Conference NAACP; Jackson Branch, NAACP; Mississippi Association for Justice; and Magnolia Bar Association - working together for Election Protection. No notes are available, but I have included press reports covering the press conference.

October 15, 2008: Mississippi Election Reform Review Panel. I provided oral statements at the hearing. No notes are available, but a copy of the Findings and Recommendations of the Panel is attached.

July 2008: Panelist, "Electing v. Appointing State Judges," Litigation Section, Mississippi Bar Association Annual Meeting, Destin, Florida. I have no notes or transcript of this event.

April 26, 2008: Speaker, "Worker Memorial Rally," Mississippi Workers' Center for Human Rights, Jackson, Mississippi. I have no notes or transcript of this event.

April 2008: Debate on Election versus Appointment of State Court Judges before Jackson Area Book/Social Club in the home of Dr. and Rev. Richard L. Blount, 4023 Boxwood Circle, Jackson, Mississippi. I have no notes or transcript of this event.

April 2008: Discussant at Roundtable on Voting Issues hosted by Preparedtovote.org. I have no notes or transcript of this event; however, the audio is available at http://preparedtovote.org/media.aspx

March 28, 2008: Jackson Young Lawyers' Annual CLE, Debate on Election versus Appointment of State Court Judges, Jackson, Mississippi. An outline of the comments and newspaper article discussing the debate are provided.

March 2008: Panelist, 56th Annual NAACP Southeast Region Civil Rights Advocacy Training Institute. I have no notes or transcript of this event.

February 2008: Guest Speaker, Black History Celebration, Little Bethel C.M.E. Church, Terry, Mississippi. I have no notes or transcripts of this event.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00219 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.191

February 21, 2008: Moderator, "Justice Thurgood Marshall: A Legal Symposium," Mississippi College School of Law, Jackson, Mississippi. I have no notes; however the program may be viewed at http://www.c-spanarchives.org/program/204049-2

February 2008: Provided testimony on behalf of the Magnolia Bar Association before the Judiciary A Committee, Mississippi House of Representatives regarding the appointment of special circuit judges in Hinds County, Mississippi. I have no notes or transcripts of this testimony.

January 17, 2008: *Is the Mississippi Bar Doing Enough to Combat Corruption and to Protect the Honor and Integrity of the Profession?*, Mississippi Federalist Society Lawyers Chapter. No notes are available, but audio and video are available at http://www.fed-soc.org/publications/pubID.486/pub_detail.asp

November 27, 2007: Press Conference of advocacy groups regarding the need for the State of Mississippi to increase funding for the representation of indigent youth. No notes are available, but I have included press reports covering the press conference.

August 17, 2007: Guest Speaker, Walthall County Boys and Girls Club Third Annual Smart Move Banquet, Tylertown, Mississippi. I have no notes or transcripts of this event.

July 2007: Guest Speaker, Young Lawyers' Committee Luncheon Program, Magnolia Bar Association, Jackson, Mississippi. I have no notes or transcripts of this event.

June 2007: Guest Speaker, Magnolia Bar Foundation Girls and Boys Law Camp Closing Ceremony, Tougaloo College, Tougaloo, Mississippi. I have no notes or transcripts of this event.

April 28, 2007: Speaker, "Worker Memorial Day Rally," Mississippi Workers' Center for Human Rights. I have no notes or transcripts of this event.

2007: Guest Speaker, Annual Banquet, The Oakes African American Cultural Center, Yazoo City, Mississippi.

March 2006: Guest Speaker, Annual Installation and Pinning Banquet, Lamba Alpha Epsilon (Criminal Justice Honor Society), Nu Omega Psi Chapter, Jackson State University, Jackson, Mississippi. I have no notes or transcripts of this event.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00220 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.192

October 29, 2005: *Highlights of Hearings of the National Commission on the Voting Rights Act*, National Commission on the Voting Rights Act (2005). No notes are available, but the report references comments I offered.

April 20, 2005: Discussant, Delivered talk to students in the Health Care Administration class, Jackson State University; Amanda Green Alexander, Instructor. No notes or transcripts are available.

February 22, 2004: Guest Speaker, Black History Month Program, St. Peter Missionary Baptist Church, Yazoo City, Mississippi.

September 13, 2002: *2002 Redistricting Successes and Failures*, The Annual Judge A. Leon Higginbotham, Jr. Memorial Braintrust, Congressional Black Caucus Foundation, Washington, D.C. Video available at http://www.broadcasturban.net/webcast/cbcf/html/redistricting.htm.

June 14, 2002: Guest Speaker, Graduation Banquet, Greater Hamilton Grove Church, Raymond, Mississippi. I have no notes or transcripts of this event.

May 3, 2002: Magnolia Bar 21st Annual CLE Program, "Litigating Civil Rights Cases in the New Millennium." I have no transcripts, but a copy of the materials provided is supplied as a publication, cited above.

May 24, 2002: Commencement Speaker, Yazoo City High School, Yazoo City, Mississippi. I have no notes or transcripts of this event.

February 22, 2002: Participant, Career Day, Davis Magnet Elementary School, Jackson, Mississippi. I have no notes or transcripts of this event.

February 5, 2002: Discussant on Sexual Harassment, Yazoo City High School, Yazoo City, Mississippi.

April 2001: Guest Speaker, "Using Law to Change Social Policy," Political Science Department's Annual Awards Dinner, Jackson State University, Jackson, Mississippi.

November 2000: Presenter, Fall Continuing Legal Education Seminar, "Nuts and Bolts of Trial Practice," Magnolia Bar Association, Jackson, Mississippi. I have no notes or transcripts of this event.

November 14-16, 2000: Instructor, Professional Responsibility Officers' Conference, United States Department of Justice, Columbia, South Carolina. I have no notes or transcripts of this event.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00221 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.193

April 4-6, 2000: Instructor, Civil Chiefs' Conference, United States Department of Justice, Columbia, South Carolina. I have no notes or transcripts of this event.

February 25, 2000: Guest Speaker, St Andrew's Episcopal School Annual Black History Month Program, Ridgeland, Mississippi.

October 1999, Presenter: FBI/Jackson Police Department Internal Affairs Training Seminar. I have no notes or transcripts of this event.

August 18, 1999, Presenter/Participant: Mississippi College School of Law's Annual Professionalism Program. I have no notes or transcripts of this event.

January 23, 1999: Guest Speaker, "Investing in our Youth to Insure Strong Leaders in the New Millennium," Kappa Alpha Psi Fraternity, Inc., Hattiesburg Alumni Founder's Day, Hattiesburg, Mississippi.

February 27, 1998: Presenter, Mississippi College School of Law's Externship Program. I have no notes or transcripts of this event.

December, 1997: Presenter, Meeting of the Medical Group Management Association, Jackson, Mississippi. I have no notes or transcripts of this event.

November 7, 1997: Presenter, The IPA (Independent/Integrated Physician) Association of America, Jackson, Mississippi. I have no notes or transcripts of this event.

April 25, 1997: Presenter, *Rules 4(i) & 4(m): Getting the United States in Court*, Eleventh Annual Federal Practice and Procedure Seminar, The Federal Bar Association and the University of Mississippi Center for Continuing Legal Education. I have no transcripts, but a copy of the materials provided is supplied as a publication, cited above.

May 10, 1996: Co-Presenter with Assistant United States Attorney Mitzi D. Paige, *False Claims Act Enforcement: A Role for the Local Bar*, Magnolia Bar Association Annual CLE. I have no transcripts, but a copy of the materials provided is supplied as a publication, cited above.

October 16, 1995: Discussant Mass Communications class at Jackson State University regarding the First Amendment; Byron Hansbro, Instructor. I have no notes or transcript.

August 1995, Presenter at the Annual Meeting of Region V Bankruptcy Trustees, Jackson, Mississippi. I have no notes or transcripts of this event.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00222 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.194

June 16, 1994: Guest Speaker, *"Moving God's Agenda in Our Communities,"* College Hill Annual Men's Day, Jackson, Mississippi.

May 1993: CLE Presentation, Magnolia Bar Association, Biloxi, Mississippi. I have no transcripts, but a copy of the materials provided is supplied as a publication, cited above.

1991: Guest Speaker, Annual Youth Day Program, St. Stephen United Methodist Church, Yazoo City, Mississippi.

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

Throughout my career I have had many occasions to be interviewed by various media outlets. I have thoroughly searched my files and internet databases and had conversations with others to refresh my memory in an effort to produce as complete a list of these as I could, but it is still possible there are some I was not able to locate.

Jackson Free Press, "First Black Judge Sworn in Under Barbour," October 30, 2009

Mississippi Link, "13th U.S. Navy Ship Takes Name of Medgar Wiley Evers at JSU," October 15-21, 2009

Natchez Democrat, "Wrongful Death Suit Settled," October 2, 2009

The Tri-State Defender, "If Governor Appoints African American as Judge, It Will Be His First," August 13, 2009

The Clarion Ledger, "Barbour Should Replace DeLaughter with Black Judge," August 9, 2009

The Clarion Ledger, "Ex-Chief Gets 30 Months in Prison," April 18, 2009

WJTV, "More Prison Time for Former Cop," Matt Kozar, April 17, 2009. In this interview I offered comments on the sentencing of the City of Mendenhall, Mississippi Police Chief, Jimmy Sullivan, who utilized excessive force and violated the civil rights of my client.

Jackson Free Press, "Barbour Ignoring Black Judge Applicants," February 11, 2009

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00223 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.195

Jackson Free Press, "Elected Judges: Battered, Bought . . . But Still Better," December 10, 2008

The Clarion Ledger, "Dems Will Shape Mississippi Judiciary Makeup," November 17, 2008

Associated Press, "Groups Work to Prevent Problems at Miss. Polls," November 3, 2008

WKXI, Straight Talk, Frank Bluntson, November 2008. I offered comments encouraging the public to vote in the upcoming election in general and in particular to vote for Jim Kitchens for Mississippi Supreme Court. I have no recording or transcript.

WMPR, The Charles Evers Show, Charles Evers, November 2008. I offered comments encouraging the public to vote in the upcoming election in general and in particular to vote for Jim Kitchens for Mississippi Supreme Court. I have no recording or transcript.

WAPT, "Legal Volunteers to Help on Election Day," October 31, 2008. I provided comments at a press conference held by several groups to encourage people to vote and to inform the public of the groups' efforts to combat potential voting problems.

WLBT, "Various Agencies Poised for Possible Election Problems," October 31, 2008. I provided comments at a press conference held by several groups to encourage people to vote and to inform the public of the groups' efforts to combat potential voting problems.

Jackson Free Press, "Voter Coalition Debut Massive Voter Watch; Criticizes Hosemann," October 31, 2008

The Clarion Ledger, "Suit Against Ex-Judge, Hinds County Revived," October 15, 2008

The Natchez Democrat, "Palmer Family Lawsuit Begins Long Process," September 23, 2008

The Roll Call, "The Black Vote and Mississippi," July 30, 2008

The Clarion Ledger, "No Tax Hike for Hinds Schools," July 3, 2008

The Natchez Democrat, "Suit Alleges Palmer's Death 'Intentional,'" July 3, 2008

NAACP Legal Defense and Education Fund, Inc., "Juvenile Life Without Parole Reform," May 27, 2008

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00224 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.196

WLOX, "Mississippi Black Professionals Training Young Leaders," Krystal Allan, May 3, 2008. I was interviewed by the local television station which covered the annual meeting of the Mississippi Black Professional Association in Biloxi, Mississippi. I have no recording or transcript.

WLBT, "Students Participate in Mock Trials," March 29, 2008. I provided comments to the news station regarding the annual high school mock trial sponsored by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc.

The Clarion Ledger, "4th Special Judge Appointed to Clear Hinds County Docket," February 5, 2008

The Clarion Ledger, "Group Blasts Hinds Special Judge Choices," January 31, 2008

The Clarion Ledger, "Vacant Post on Federal Court Spikes Workload," January 21, 2008

The Clarion Ledger, "Lawyers Champion Judicial Reforms," January 20, 2008

WKXI, Straight Talk, Frank Bluntson, January 2008. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WMPR, The Charles Evers Show, Charles Evers, January 2008. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

The Jackson Advocate, "Wooten Wins Again," December 20-26, 2007

WMPR, The Othor Cain Show, Othor Cain, December 21, 2007. I provided a discussion of the election between Adrienne Wooten and John Reeves for the House Seat 71 of the Mississippi Legislature. The contest was being waged at the ballot box as well as the courthouse. I also used this opportunity to encourage the public to vote for Ms. Wooten, who I was representing in the litigation. I have no recording or transcript.

The Clarion Ledger, "Wooten 18 Votes Ahead of Reeves," December 19, 2007

The Clarion Ledger, "House District Revote Today, Candidates Vow to Keep Up Fight," December 18, 2007

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00225 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.197

Jackson Free Press, "District 71 Re-Vote on for Tuesday," December 17, 2007

The Clarion Ledger, "District 71 Election Back On, Court says," December 14, 2007

Jackson Free Press, "Reeves Plans to Challenge Ruling," December 12, 2007

The Clarion Ledger, "Commission Certifies Contested Election After Judge's Ruling," December 12, 2007

The Clarion Ledger, "Candidate Wants Race Called," December 8, 2007

The Jackson Free Press, "Carlton Reeves," interview by Kristen Phillips, December 5, 2007

WMPR, The Charles Evers Show, Charles Evers, December 2007. I provided a discussion of the election between Adrienne Wooten and John Reeves for the House Seat 71 of the Mississippi Legislature. The contest was being waged at the ballot box as well as the courthouse. I also used this opportunity to encourage the public to vote for my client, Ms. Wooten. I have no recording or transcript.

WKXI, Kixie Sunday Morning Magazine, Lessie Hayes, December 2007. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

Associated Press, "Advocates Say More Money Needed for Lawyers in Youth Cases," November 27, 2007

WKXI, Straight Talk, Frank Bluntson, November, 2007. I offered comments encouraging the public to vote in the upcoming election. I have no recording or transcript.

The Clarion Ledger, "Senate Oks Mississippi Judge," October 25, 2007

Politico.com, "Vote to Indicate Heft of Southwick Baggage," October 22, 2007

Associated Press, "DHS Successfully Appeals $750K Judgment in 2004 Hinds Co. Case," August 10, 2007

The Clarion Ledger, "Court Reverses $750K Award," August 9, 2007

Associated Press, "State Jurist Faces Confirmation Vote in U.S. Senate," June 4, 2007

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00226 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.198

Associated Press, "Mississippi Jurist Faces Confirmation Vote in U.S. Senate," June 4, 2007

Fulton County Daily Report, "Bush's Black Nominees Scarce in South; Experts: As Judges Retire, Next Generation May Never See a Southern Black Judge," May 10, 2007

WJSU, The Metro Journal, Eric Stringfellow, May 18, 2007. I was interviewed and offered comments regarding the pending nomination of Judge Leslie Southwick to the United States Fifth Circuit Court of Appeals and the Magnolia Bar's opposition to the nomination. I have no recording or transcript.

WKXI, Straight Talk, Frank Bluntson, May 2007. I was interviewed and offered comments regarding the pending nomination of Judge Leslie Southwick to the United States Fifth Circuit Court of Appeals and the Magnolia Bar's opposition to the nomination. I have no recording or transcript.

WJNT, The Kim Wade Show, Kim Wade, May 2007. I was interviewed and offered comments regarding the pending nomination of Judge Leslie Southwick to the United States Fifth Circuit Court of Appeals and the Magnolia Bar's opposition to the nomination. I have no recording or transcript.

Minority Law Journal, "Diversity Scorecard: Bush's Scarce Black Nominees," May 1, 2007

The Clarion Ledger, "Mendenhall Police Chief Faces More Legal Problems," March 31, 2007

The Commercial Appeal, "DHS Argues Against Abuse Judgment—Jackson Teen had been Awarded $750,000," March 30, 2007

The Clarion Ledger, "DHS Appeals '04 Judgment," March 29, 2007

The Clarion Ledger, Opinion of Eric Stringfellow, January 26, 2007

WLBT, The Morning Report, January 2007. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WJTV, The Morning News, Erin Pickens, January 2007. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00227 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.189

Alan Morrison & Diane T. Chin, Beyond the Big Firm: Profiles of Lawyers Who Want Something More, 121-30 (2007)

The Clarion Ledger, "E-discovery Draws Scrutiny," December 16, 2006

The Clarion Ledger, "Lextron Racial Slur Lawsuit Settled," October 20, 2006

Pro Bono Law Ontario, "Poor Often Have No Legal Access," September 14, 2006

WJTV, I was interviewed for the news concerning the a lawsuit that I filed on behalf of my client against the City of Mendenhall, Mississippi, its police chief, Jimmy Sullivan and other defendants concerning the violation of my client's civil rights. I have no recording or transcript.

Mississippi Link, "Magnolia Bar Members and Supporters Gather at Tougaloo for Summit 2006," August 10, 2006

Mississippi Link, "Rape Lawsuit Proves Columbia Training School Fails Children and Taxpayers," July 20-26, 2006

Mississippi Link, "Magnolia Bar Opposes Wallace," May 11-17, 2006

WKXI, Straight Talk, Frank Bluntson, January 2006. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WLBT, The Morning Report, January 2006. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WJTV, The Morning News, Erin Pickens, January 2006. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WAPT, The Morning News, January 2006. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

Mississippi Link, "Killen's Release Opens Old Wound Again," August 18-24, 2005

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00228 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.200

Greenwood Commonwealth, "Suit against City is in Judge's Hands," August 10, 2005

Greenwood Commonwealth, "Doctor: Victim Mentally Injured by Attack," August 9, 2005

WABG, interviewed by the local television station regarding the trial in the case (Streeter v. City of Greenwood, Civ. Action No. 2003-0098CICI (Leflore County Circuit Court)-) filed against the City of Greenwood, Mississippi for its failure to properly supervise participants in the work release program which resulted in my client being raped by a participant in that program. I have no recording or transcript.

Greenwood Commonwealth, "Trial Set in Negligence Suit Against City," August 7, 2005

Associated Press, "Judge to Begin Hearing Negligence Lawsuit Against City of Greenwood," August 7, 2005

WLBT, The Morning Report, January 2005. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WJTV, The Morning News, Erin Pickens, January 2005. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WKXI, Straight Talk, Frank Bluntson, November 2004. I offered comments encouraging the public to vote in the upcoming election. I have no recording or transcript.

The Clarion Ledger, "Event Offers Minorities Chance to Look into Law," February 28, 2004

WKXI, Straight Talk, Frank Bluntson, January 2004. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

WLBT, The Morning Report, January 2004. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00229 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.201

WJTV, The Morning News, Erin Pickens, January 2004. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

The Clarion Ledger, "Re-mapping Ruled Out for State Courts," December 19, 2003

WKXI, Straight Talk, Frank Bluntson, November 2003. I have no recording or transcript.

Lifenews.com, "Mississippi Abortion Practitioners May be Held Liable for Complications," July 14, 2003

The Clarion Ledger, "Abortion Rights Group says State Among Worst for Anti-Choice Restrictions," July 14, 2003

The Clarion Ledger, "A Victory for the Plaintiffs," March 23, 2003

WMPR, The Charles Evers Show, Charles Evers. I discussed the upcoming Magnolia Mid-Winter Banquet, January 8, 2003. I have no recording or transcript.

WKXI, Straight Talk, Frank Bluntson, January 2003. I have no recording or transcript.

Mississippi Lawyer, December 2002/January 2003

The Clarion Ledger, "Lawyer Honored for Civil Rights Acts," November 20, 2002

WKXI, Straight Talk, Frank Bluntson, November 2002. I offered comments encouraging the public to vote in the upcoming elections. I have no recording or transcript.

The Clarion Ledger, "GOP Seeks At-Large Congressional Races," May 16, 2002

The Jackson Advocate, "U.S. Commission on Civil Rights Appoints 15 to Advisory Board," February 21-27, 2002

The Mississippi Business Journal, January 21, 2002

WKXI, Straight Talk, Frank Bluntson, January 2002. I provided comments on this radio program encouraging the public to attend the annual Mid-Winter Banquet and Awards hosted by the Magnolia Bar Association, Inc. and the Magnolia Bar Foundation, Inc. I have no recording or transcript.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00230 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.202

Associated Press, "Opposing Lawyers Defend Own Versions of Redistricting Plans," December 20, 2001

The Clarion Ledger, "Redistricting Judge to Make Ruling Quickly," December 20, 2001

Associated Press, "Lawyers Make Closing Arguments in Mississippi Redistricting," December 19, 2001

WLBT, WJTV and WAPT, December 2001. I was interviewed by the local television stations on multiple occasions during the trial regarding the redistricting of Mississippi' Congressional districts. I have no recordings or transcripts.

Associated Press, "Federal Judges Might Take Over Mississippi Redistricting," December 5, 2001

The Democrat, "Cathey Voted off Board, Vote Stayed Until Appeal," October 9, 2001

Mississippi Supreme Court, "Judicial Study Commission Discusses Campaign Finance and Other Reforms," September 14, 2001

Mississippi Supreme Court, "Study Commission Discusses Improvement for Judiciary," July 19, 2001

The Clarion Ledger, "Three Lawsuits Claim Employees Not Paid Overtime," June 29, 2001

Associated Press, "Overtime Pay Questioned in Lawsuit for Workers at Three Private Prisons in Mississippi," June 22, 2001

The Clarion Ledger, "Judge to Rule on Mayoral Ballot," April 3, 2001

The Clarion Ledger, "City Elections Canton," April 3, 2001

The Clarion Ledger, "Punch-Card System may Cause Voter Confusion," November 6, 2000

The Clarion Ledger, "Vote-Selling Web Site to Get Warning," October 19, 2000

The Clarion Ledger, "Disabled Reaping Benefits of ADA," July 16, 2000

The Clarion Ledger, "No Decision Yet on Noble Retrial in Dahmer Case," December 27, 1999

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00231 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.203

The Clarion Ledger, "Last Trial in 1966 Dahmer Murder by Klan to Begin," June 7, 1999

Associated Press, "Assistant U.S. Attorney Appointed Election Officer," October 30, 1998

Anthony Walton, Mississippi: An American Journey, 117-23 (1996)

New Orleans Times Picayune, "Miss. Court Justice Enjoys His Return to Private Practice," July 14, 1991

WLBT, Pumoja, 1989. I was interviewed on this local community affairs program concerning capital punishment. I have no recording or transcript.

The Washington Post, "Democratic Party Losing Young Adherents Left and Right," May 21, 1986

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

On April 6, 2007, the Senior Chancellor of the Fifth Chancery Court District, appointed me Hinds County Family Master to adjudicate cases brought by the Mississippi Department of Human Services seeking to establish paternity and obtaining child support for children who do not live in the home with both parents. My appointment has been renewed each six months. My current term is set to expire on June 30, 2010.

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

My authority is limited. I hear cases without a jury and make recommendations for the adoption by the Hinds County Chancellors pursuant to Miss. Code Ann. § 9-5-255. Because the issues are narrow and focused, I generally hear as many as 30-40 cases on the one day each week I serve.

i. Of these, approximately what percent were:

jury trials:	
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	

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

I have not written opinions.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00232 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.204

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

As a Hinds County Family Master, I primarily adjudicate establishments of paternity in connection with petitions for child support. The legal disputes in the cases are routine and defendants are typically unrepresented.

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

I have not written opinions.

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

None.

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

I am not aware of any cases in which I was reversed by a reviewing court.

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

I have not issued written decisions.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not issued opinions on federal or state constitutional issues.

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00233 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.205

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

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

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

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

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

    Where I have represented or currently represent someone, I automatically enter an order of recusal when that person appears as a party. On those occasions where I have knowledge of or a close relationship with a party who appears in the case before me, I provide an on-the-record announcement of my knowledge of the individual, and my relationship with him or her. After such disclosure, if a party desires my recusal, I will honor the party's request. These circumstances have only arisen in a very minute number of cases – probably less than ten.

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

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

    On December 19, 2007, Governor Haley Barbour appointed me to the Board of Directors of the College Savings Plan of Mississippi. My term is set to expire June 2010. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00234 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.206

I served as Co-Chair of the Kitchens for Supreme Court Campaign for the election held on November 4, 2008. The candidate was Jim Kitchens. My role in the campaign lasted from approximately April 2008 through November 2008. This was an unpaid position. My primary role was to give advice to the candidate and the campaign staff regarding the issues of the campaign and the get-out-the-vote efforts. This is the only campaign in which I have held a formal role.

Since 1979, I have volunteered in state and federal elections on all levels from municipal, county, district and state-wide offices in legislative, executive and judicial arenas. Volunteering has included, among other things, door-to-door canvassing, speaking before audiences and at political rallies, making appearances on radio programs and hosting fundraisers. I have also participated in election protection efforts in various campaigns.

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

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

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

1989-1990; I served as a law clerk to the Honorable Reuben V. Anderson, Mississippi Supreme Court.

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

I have never practiced alone.

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

1991
Mississippi Supreme Court
450 High Street
Jackson, Mississippi 39201
Staff Attorney (1991)

1991-1995
Phelps Dunbar, L.L.P
111 E. Capitol Street, Suite 600
Jackson, Mississippi 39201
Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00235 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.207

1995-2001
United States Department of Justice
United States Attorney's Office for the Southern District of Mississippi
188 East Capitol Street, Suite 500
Jackson, Mississippi 39201
Assistant United States Attorney, Chief of the Civil Division (1995-2001)
District Election Officer (1998-2001)

2001-2006
Pigott Reeves Johnson & Minor, P.A.
775 North Congress Street
Jackson, Mississippi 39202
Shareholder

2006-Present
Pigott Reeves Johnson, P.A.
775 North Congress Street
Jackson, Mississippi 39202
Shareholder

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

I have served as a mediator on four occasions. Three involved motor vehicle accidents; the fourth was a commercial fraud case. I also have served as an arbitrator in one matter, which involved a motor vehicle accident.

b. Describe:

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

After completing my judicial clerkship, I served as a staff attorney for the Mississippi Supreme Court where I oversaw the motions docket and post-conviction relief matters and advised the justices regarding the proper disposition of said motions. In 1991, I joined the Phelps Dunbar Law Firm as a litigation associate. I litigated various matters before administrative bodies, state and federal trial and appellate courts. I tried a number of cases to verdict. Most of my work involved representing corporations and governmental entities which had been sued; however, I also represented these parties as plaintiffs and on some occasions I represented individual plaintiffs.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00236 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.208

As Assistant United States Attorney, Chief of the Civil Division of the United States Attorney's Office for the Southern District of Mississippi, from 1995 through 2001, I supervised a team of approximately thirty individuals, including nine attorneys. I oversaw the civil, trial and appellate litigation in which the United States, its agencies and employees were involved. These matters included defending the government in various matters: torts, constitutional torts, medical malpractice, employment discrimination, claims filed under the Freedom of Information Act, administrative law and on many occasions criminal defense. I also supervised the affirmative litigation including claims filed under the False Claims Act, bankruptcy, foreclosure, employment discrimination, fair housing and claims prosecuted under the American with Disabilities Act. The third area that I supervised included the civil enforcement unit including the Financial Litigation Unit whose responsibility included collecting fines, civil and criminal penalties, assessments and conducting other post-judgment proceedings.

As Civil Chief, I maintained an active caseload and prepared and tried bench and jury trials in many of the above mentioned areas including employment discrimination, emergency matters, torts, violations of the False Claims Act, FOIA and administrative law. I also prosecuted and defended appeals in the Fifth Circuit Court of Appeals. I was appointed the District Election Officer and was tasked with the responsibility of supervising the investigation and prosecution of election fraud matters and taking steps to protect the voting rights of Mississippi citizens. I offered advice and assistance to government lawyers from other districts and the Department of Justice Division attorneys who practiced within the district. Finally, I served on the Civil Chiefs' Working Group of the Executive Office of United States Attorneys.

Since establishing our law firm in 2001, I have continued to actively litigate cases representing plaintiffs and defendants including individuals, corporations and governmental bodies in all state and federal trial and appellate courts in Mississippi and on occasion in other states. I have represented plaintiffs and defendants in employment discrimination cases including claims of race, sex, age, disability and national origin discrimination. I also litigated cases involving election law, redistricting, legal malpractice, personal injury, silica mass tort, securities fraud, enforcement of the Fair Labor Standards Act, commercial litigation and personal injury.

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

As Assistant United States Attorney, I represented the United States, its employees and agencies in affirmative and defensive matters.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00237 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.229

In the course of my private practice, I represented a broad range of clients including individuals, corporations and public bodies.

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

My practice has always been in litigation, including state and federal trial and appellate courts. I have tried cases before administrative bodies, judges, and juries. Maintaining an active civil caseload, even as Chief of the Civil Division of the U.S. Attorneys Office, Southern District of Mississippi, has allowed me to appear in court frequently for hearings on motions and trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 70%
   2. state courts of record: 25%
   3. other courts: 2%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I have tried approximately thirty-five to forty cases to verdict. In more than half of these, I was either sole or chief counsel.

i. What percentage of these trials were:
   1. jury: 60%
   2. non-jury: 40%

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

After having tried a case before a three judge panel of the Fifth Circuit Court of Appeals, I was on brief for the appellants/cross appellees in *Branch v. Smith*, 538 U.S. 254 (2003).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00238 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.210

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

    a. the date of representation;

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

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

1. *Branch v. Clark*, G-2001-1777 W/4 (Hinds County Chancery Court, Hon. Patricia D. Wise), *rev'd sub. nom.*, *Mauldin v. Branch*, 866 So.2d 429 (Miss. 2003). *Smith v. Clark*, 189 F.Supp.2d 503 (S.D. Miss. 2002); *Smith v. Clark*, 189 F.Supp.2d 529 (S.D. Miss. 2002); *Smith v. Clark*, 189 F.Supp.2d 548 (S.D. Miss. 2002), *aff'd sub. nom.*, *Branch v. Smith*, 538 U.S. 524, 123 S.Ct. 1429 (2003) (Hon. Grady Jolly, Henry Wingate and David Bramlette).

   In this set of cases I served as co-counsel for voters who petitioned the state chancery court to adopt a Congressional redistricting plan following the 2000 decennial census when the state legislature failed to perform its duty. This was the first time in the history of the state that the legislature failed to redistrict its congressional districts. After a bench trial of more than a week, the chancery court granted the relief requested by plaintiffs and adopted a Congressional Redistricting Plan. The intervening defendants then filed an action before a three judge panel of the United States District Court seeking to enjoin the state courts from implementing its plan. After a trial before the three judge panel, that court issued an injunction and adopted its own plan. The decision of the three judge panel was appealed to the United States Supreme Court which affirmed the federal injunction. The appeal from the chancery court was subsequently heard by the Mississippi Supreme Court which reversed the chancery court, and ruled that the state courts lacked authority to redistrict even when the legislature abdicates its responsibility.

   Co-Counsel in this case was Rob McDuff, 769 N. Congress Street, Jackson, MS 39201, 601- 969-0802. Opposing Counsel were Michael B. Wallace, Wise Carter Child & Carraway, Post Office Box 651, Jackson, MS 39205, 601-968-5500; Grant M. Fox, Fox Law Group, 276 Maxey Drive, Brandon, MS 39042, 601-825-6111; F. Keith Ball, U.S. Magistrate Judge, U.S. District Court, 245 E. Capitol Street, Suite 400, Jackson, MS 39201, 601-965-4292.

2. *Banks v. CCA*, Civil Action No., 4:01-CV-150PB (N.D. Miss. 2001)(Hon. Allen Pepper); *Hale v. CCA*, Civil Action No., 2:01-CV-145(N.D. Miss. 2001)(Hon.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00239 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.211

Eugene M. Bogen); *Shepherd v. CCA*, Civil Action No., 5:01-CV-179BRS (S.D. Miss. 2001)(Hon. David Bramlette)

I served as co-counsel in a collective action and two related lawsuits representing hundreds of employees of the owner and operator of private prisons in the state of Mississippi. We alleged that the defendant routinely and willfully violated the Fair Labor Standards Act and committed other illegal acts when it failed to compensate its employees for overtime. These cases settled before trial.

Co-Counsel in this case were Cliff Johnson, Pigott Reeves Johnson, P.A., 775 N. Congress Street, Jackson, MS 39201, 601-354-2121; Doug Minor, Bradley Arant Boult Cummings, 188 E. Capitol Street, Suite 400, Jackson, MS 39201, 601-948-8000. Opposing Counsel were Wayne Drinkwater, Will Manuel, Margaret Cupples, Bradley Arant Boult Cummings, 188 E. Capitol Street, Suite 400, Jackson, MS 39201, 601-948-8000.

3. *Johnson v. Waldrup*, Civil Action No. 2001-0325-CI (Sunflower County Circuit Court) (Hon. Margaret Carey McCray)

I served as co-counsel in an election contest for the African-American candidate in a case where she alleged that several white poll workers had illegally thrown out the votes of many African Americans thus causing the long-time white incumbent to win the alderman-at-large position. Never before had the City of Drew, Mississippi, which was more than 75% African-American, elected a majority African-American Board of Alderman. At trial we proved that the election was riddled with errors including the illegal rejection of ballots cast by African-American voters. After counting many of the votes which had been cast for Johnson, and that we argued should be counted, the court ordered a new election. Having removed the barriers of harassment and intimidation, the voters elected the candidate of their choice—our client—resulting in Drew's first African-American majority Board of Alderman. That election was the catalyst for the voters to elect the city's first African-American mayor a few years later.

Co-Counsel was Rob McDuff, 769 N. Congress, Jackson, MS 39201, 601-969-0802. Opposing Counsel was John H. McWilliams, Townsend McWilliams & Holladay, P.O. Box 288, Drew, MS 38737-0288, 662-745-8517

4. *In re: Appeal of Michael Cathey*, Civil Action No. 2001-0186-C-T (Tate County Circuit Court)(Hon. George Carlson and Hon. Andrew Baker)

I served as co-counsel representing the sole African-American on the Board of Alderman of the City of Senatobia, Mississippi. Cathey had been duly elected to his second term as alderman. Even though he was deemed qualified by his party's committee and won the general election, after he was sworn into office, a local citizen, with the aid of some of the members of the city council and other government officials, sought to have Cathey removed from office. These persons claimed that

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00240 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.212

Cathey moved from the district because he had purchased a second house outside of the district. Through various appeals and hearings, one of which occurred before the Mayor and Board of Alderman, Cathey was ultimately successful in retaining his seat. Moreover, the circuit court ruled that he could not be removed from his seat because he had not moved from the district. Had Cathey been removed from office the will of the voters in his ward would have been supplanted. Cathey continues to serve as alderman.

Co-Counsel was Doug Minor, Bradley Arant Boult Cummings, 188 E. Capitol Street, Suite 400, Jackson, MS 39201, 601-948-8000. Opposing Counsel were Tommie Cardin, Sam Keyes, Butler Snow, 1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157, 601-948-4570.

5. *Fleming v. State of Mississippi*, 687 So.2d 146 (Miss. 1997) (Trial Judge, Hon. James Sumner)

I represented a former member of the Attala County Board of Supervisors on the appeal of his conviction of fraud by public officer when he purportedly used county money to repair his personal tractor equipment. During the investigation for his appeal, I learned that one of the jurors who served on his jury was a convicted felon. Under Mississippi law, convicted felons are disqualified from serving on juries, and it was clear from the record that the parties and the court inquired of the venire their criminal background. The juror never disclosed his status as a felon. The trial court denied our post-trial motions agreeing with the state that Fleming had not been denied a fair trial because it was likely that a convicted felon was more likely to render a verdict against the state. The Mississippi Supreme Court, however, reversed the trial court and granted Fleming a new trial.

Trial Counsel was Hon. Jannie Lewis, 101 Cedar Street, Lexington, MS 39095, 662-834-1452. Opposing Counsel was Jeffrey A. Klingfuss (on appeal), Special Assistant Attorney General, 450 High Street, 601-359-3692.

6. *United States v. Jointer*, 910 F.Supp. 279 (S. D. Miss. 1995)(Hon. Walter Gex)

In one of the early cases brought by the United States Attorney's Office under the False Claims Act, the defendant, a podiatrist, argued that she was entitled to summary judgment contending that she did not "knowingly" submit false claims as she did not have actual knowledge of the falsity of the claims as the nursing homes for which she was providing services had given her incorrect Medicaid and Medicare numbers of the patients she had treated. The court adopted the government's argument that "knowing" under the False Claims Act is defined broadly to include reckless disregard. The court denied Jointer's request for summary judgment. The parties settled before trial with Jointer agreeing to pay damages to the government.

Opposing Counsel was David C. Frazier, 706 Watts Avenue, Pascagoula, MS 39567, 228-769-7754

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00241 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.213

7. *Haire v. United States*, 101 F.Supp.2d 478 (N. D. Miss. 2000)(Hon. W. Allen Pepper)

In a case in which the United States Attorneys Office, in the Northern District of Mississippi was recused, I represented the United States Department of Agriculture and its employees as lead counsel in a lawsuit where plaintiff claimed that she had been discriminated against because of her race, sex, and marital status. Plaintiff also alleged that she had endured retaliation when she allegedly complained of the discriminatory treatment. The court granted summary judgment on all claims except for retaliation. The retaliation claim was tried before a jury in a week long trial. The jury returned a verdict for the agency.

Co-Counsel was Cindy Eldridge, U.S. Department of Justice, 9510 Tirana Place, Dulles, VA 20189-9510, 305-560-4540. Opposing Counsel were Ronald W. Lewis, 2621 W. Oxford Loop, Suite C, Oxford, MS 38655, 662-234-0766; Lisa S. Rohman, 315 A Magazine Street, Tupelo, MS 38801-4865, 662-841-0636.

8. *Bennett v. United States*, Civil Action No. 3:97-CV-745BN, (S.D. Miss. 1999) (Hon. William H. Barbour, Jr.), *rev'd sub. nom, Bennett v. Barnett*, 210 F.3d 272 (5th Cir. 2000), *cert. denied* 531 U.S. 875, 121 S. Ct. 181 (2000).

I represented the United States Postal Service and individual officers and employees of the agency on claims of damages alleging constitutional torts and violations under the Federal Tort Claims Act resulting from an investigation of an altercation between two employees. The Plaintiffs included a postal worker and the union steward, who also was employed by the postal service. The union steward was allowed to participate in an interview of the employee who allegedly had a gun on the premises of the post office. When the postal inspector sought to obtain the employee's consent to search his vehicle, the union steward objected and interfered with the investigation, and she was forcibly removed from the interview room. The steward filed assault charges against the inspector. I represented the postal inspector on the criminal charges which were dismissed. Plaintiffs then filed a suit in federal court asserting that they should be able to proceed with the *Bivens* claims alleging violations of the First, Fourth, Fifth and Sixth Amendments against their supervisors and employer. The district court granted our motion to dismiss and ruled that the plaintiffs' claims were precluded by the Civil Service Reform Act and the Postal Reorganization Act. The trial court, however, denied our motion to dismiss the state tort claims, rejecting our argument that any state tort claims were barred by the Federal Employees' Compensation Act (FECA). We proceeded to trial on the state tort claims. After finding for one of the plaintiffs and awarding damages in the amount of only $2,500, I convinced the Appellate Division to file a cross-appeal on the trial court's ruling that the FECA did not bar the state tort claims. The Fifth Circuit Court of Appeals affirmed the district court on the *Bivens* claims but reversed the trial court on our cross-appeal finding that plaintiff's exclusive remedy for her on-the-job tort injuries is the FECA.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00242 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.214

Co-Counsel on appeal were Edward Himmelfarb, Robert Greenspan, U. S. Department of Justice, Civil Division, Appellate Staff, 601 D Street, NW, Washington, DC 20530-0001. Opposing Counsel were Melanie Bennett (*pro se*), Anton L. Hajjar, Darrell Anderson, O'Donnell, Schwartz & Anderson, 1300 L Street, N.W., Suite 1200, Washington, D. C. 2005.

9. *State of Mississippi v. Charles Noble*, Nos. 6785 and 6793, Forrest County Circuit Court (Hon. Richard McKenzie)

In this case the defendant, who was on trial in state court as a co-conspirator in one of Mississippi's infamous 1960's civil rights murders, moved to compel the FBI to release information from its files and to provide testimony which would aid in his defense. Defendant sought information on certain informants and others who may have provided any information to the FBI when it was investigating this notorious crime. On behalf of the FBI, I moved to quash the trial subpoena asserting that even though the crime for which this defendant was being tried occurred decades ago, the FBI files contain privileged and confidential information. It included the identities of confidential informants and information furnished by informants with respect to other investigations. And, further the FBI's decision to not disclose the information in response to the subpoena was appropriate as disclosure of confidential informant information could endanger the informants, if living, or their surviving family members. Moreover, disclosure of informant information could also have a devastating impact on the FBI's ability to recruit future informants if they feared that their identity would be disclosed and the information they provided released to the general public. The trial court quashed the subpoenas.

Opposing Counsel was Joe Sam Owen, Owen Galloway & Myers, 1414 25th Avenue, Gulfport, MS 39502, 228-868-2821.

10. *Warren v. Joyner*, 996 F.Supp. 581 (S.D. Miss. 1997) (Honorable Tom S. Lee)

I represented the doctor and a health clinic covered by the Public Health Services Act which provides that certain federally funded clinics and employees are entitled to the protection of the Federal Tort Claims Act (FTCA). Although the case had been proceeding in state court for more than a year, once the Public Health Service became aware that one of its clinics and physicians had been sued, the case was removed to federal court. We then filed a motion to dismiss as the plaintiff failed to exhaust her administrative remedies as required by the FTCA. The court concluded that the defendants had not waived their rights to be protected by the procedures set forth under the FTCA even though the case was being litigated in state court for more than a year. Because the plaintiff had not filed an administrative claim with the agency, the court dismissed the action. This was the first of many cases that the courts in this district would address the newly enacted provisions of the Public Health Services Act wherein federally supported health clinics are entitled to the protections set out in the FTCA.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00243 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.215

Opposing Counsel was Eric A. Tiebauer, Jr., 4363 Highway 45N, Waynesboro, MS 39367, 601-735-5222.

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

During my years of practice, I have been involved in many bar and legal related committees and activities. I have served on a number of committees, commissions and boards of organizations whose primary responsibility is to provide access to legal services for those who cannot afford them and to advocate on their behalf.

Through the Magnolia Bar Association in which I have served in a variety of capacities including President, I have promoted reform in the law, advocated for diversity in all branches of government including the judiciary, called attention to civil rights and voting rights issues and addressed issues that affect the legal profession in general and the African-American community in particular. We expanded the voice of the Magnolia Bar by partnering with groups and organizations that had these similar principles at the core of their agenda. I have also used the Magnolia Bar and other associations and affiliations as vehicles through which to mentor high school and law students, and I have mentored young lawyers.

Through the Magnolia Bar Foundation, Inc., of which I also served on the Board of Directors and as President, I participated in the annual high school mock trial competition co-sponsored by the association and foundation. We raised money to support scholarships for high school and law school students. I, however, take the most pride in planning our annual "law" camps for boys and girls. These "law" camps are unique in the sense that they target primarily African-American children from homes throughout Mississippi headed by single mothers. We make sure that the focus of the camp is far more expansive than merely encouraging the students to become lawyers. We emphasize the importance of being good, productive and responsible citizens. During the camp we teach useful skills such as: table etiquette; interviewing skills; dressing appropriately; the value of earning, saving and investing money; living a healthy life-style; and conflict resolution. We also make sure that the students are exposed to various African-American professionals including doctors, bankers, investment officers, business owners, and persons within law enforcement because the limit of many of the students' exposure to black professionals does not reach beyond their teachers.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00244 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.216

I served as an adjunct faculty member at Jackson State University during the 1992 fall semester. I taught a course entitled The Judicial Process, which exposed the students to various principles in the judicial process. Students were taught how to analyze court opinions, theories of recovery, building cases upon precedent, and standard of review. I have no syllabus for this course.

During the 1994 spring semester, I taught a health law course at the Mississippi College School of Law. The primary focus of this case was to teach the theoretical applications of medical malpractice cases from the perspective of plaintiffs and defendants. I have no syllabus for this course.

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

Based upon my law firm's partnership agreement, I would expect to receive compensation from the firm for a period of time after departing the firm. The amount of compensation would be dictated primarily by the timing of the final resolution of cases that are currently being handled. In addition, I expect to receive a certain amount of income under the firm's profit-sharing agreement.

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

I do not have any plans, commitments or agreements to pursue outside employment with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00245 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.217

24. **Potential Conflicts of Interest**:

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

Parties, categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during my initial service as district judge would include family members, relatives, close friends, former clients, business associates/partners including my firm law partners and other attorneys with whom I have an existing financial relationship.

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

I will handle all matters involving actual or potential conflicts-of-interest through the Code of Judicial Conduct for United States Judges and any other relevant statutory provisions and canons. If any issue of potential conflict were to arise, I would consult the applicable statutes and seek advice from the Code of Conduct Committee of the Judicial Conference.

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

Throughout my legal career, I have worked on efforts to increase the availability of legal services to the indigent and underserved. For several years, I was on the Board of Directors of Mississippi Center for Legal Services. I am currently serving on the Board of the Mississippi Center for Justice and just recently ended my tenure on the Board of the Mississippi Workers Center for Human Rights, two public interest non-profit law firms. I was appointed to the Mississippi Access to Justice Commission by the Mississippi Supreme Court. The central focus of this commission is to study and implement plans to expand access to the courts to the public especially those of whom are precluded from access because of the lack of their financial means.

In addition to advocating through commissions, committees and organizations, I routinely accept pro bono cases. In that regard I have represented parties pro bono in divorces in instances where domestic violence was a part of the marriage. In fact, I represented a mother who wanted a divorce from her husband who had fathered a child with his wife's minor daughter. The mother wanted to make sure that she obtained custody of the child and terminate her marriage with the perpetrator and to terminate any paternal and custodial rights the father normally would have. I have also prepared guardianships for families so that the children could enroll in school.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00246 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.218

26. **Selection Process**:

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

There is no official selection commission in my jurisdiction to recommend candidates for nominations to the federal courts.

I was recommended to the President by Honorable Bennie G. Thompson, United States Representative, 2nd Congressional District, Mississippi. Having been aware that there is a long time vacancy within the district, I advised Congressman Thompson that I was interested if the opportunity became available. In September 2009, I was contacted by staff from White House Counsel's Office and informed that the office had become aware of my interest. I was further advised that Senator Thad Cochran desired to meet me and that I should make an appointment with his office. After scheduling the appointment, I contacted the White House Counsel's Office to advise that the meeting had been confirmed.

On October 6, 2009, I met with Senator Cochran and two staff members. After our meeting, the staff members informed me that Senator Roger Wicker had learned that I was in town, and at his request I met with him. After returning to Mississippi, I spoke with White House Counsel to advise that the meetings had taken place.

Since January 21, 2010, I have been in contact with pre-nomination officials at the United States Department of Justice. On March 1, 2010, I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the Department of Justice. On April 28, 2010, the President submitted my nomination to the Senate.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00247 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.219

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

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
Reeves, Carlton W.	Southern District of Mississippi	04-27-10
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 04-28-10 ___ Initial ___ Annual ___ Final	01/01/09 - 3/31/10
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.**	
245 E. Capitol Street Jackson, MS 39201	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	Shareholder/Partner	Pigott Reeves Johnson, P.A.
2	Trustee	Community Foundation of Greater Jackson
3	Director	College Savings Plan of Mississippi

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

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	2006	Pigott Reeves Johnson, P.A. Partnership Agreement with former law firm
2	2001	Pigott Reeves Johnson & Minor, P.A. Retirement Plan with former law firm

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	2008	Pigott Reeves Johnson, P.A. (Salary)	$ 110,226.00
2	2009	Pigott Reeves Johnson, P.A. (Salary)	$ 162,688.00
3	2010	Pigott Reeves Johnson, P.A. (Salary)	$ 62,673.00

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.)	
1	None	
2		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Reeves, Carlton W.	04-27-10

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*
☐	**NONE** (No reportable liabilities.)		
1	First Commercial Bank	Mortgage on law firm property, Jackson, MS	L
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
Reeves, Carlton W.	04-27-10

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. Income during reporting period (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D. Transactions during reporting period. 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 MorganStanley, Account	B	Int.	K	T	Exempt				
2 3M Company, Common	A	Div.	J	T					
3 ADI, Common	A	Div.	J	T					
4 AT&T Inc., Common	A	Div.	J	T					
5 BCS, Common	A	Div.	J	T					
6 Caterpillar, Common	A	Div.	J	T					
7 EagleCapital Growth Fund, Comm.	A	Div.	J	T					
8 General Electric, Common	A	Div.	J	T					
9 Goldman Sachs, Common	A	Div.	J	T					
10 JNJ, Common	A	Div.	J	T					
11 Kroger, Common	A	Div.	J	T					
12 McDonalds, Common	A	Div.	J	T					
13 Merck & Co., Common	A	Div.	J	T					
14 Microsoft Corp., Common	A	Div	J	T					
15 Morg Stan Ins. Muni,Inc. Tr., Com	B	Div	K	T					
16 Morgan Stanley, Common	A	Div	J	T					
17 Pepsico, Common	A	Div	J	T					
18 Procter & Gamble, Common	A	Div	J	T					

1 Income/Gain Codes: (See Col. B1, 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 Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=More than $50,000,000

3 Value Method Codes: (See Col. 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
Reeves, Carlton W.	04-27-10

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)									
19	Qualcomm, Common	A	Div.	J	T					
20	Trustmark CP, Common	A	Div.	J	T					
21	Walmart, Common	A	Div.	J	T					
22	Windstream, Common	A	Div.	J	T					
23	YUM Brands, Inc., Common	A	Div.	J	T					
24	First Commercial Bank, Common	A	Div.	K	T					
25	EAAFX, Mutual Fund	B	Div.	F	T					
26	IRA	A	Div.	J	T					
27	-- FAGOX, Mutual Fund									
28	IRA	A	Div.	K	T					
29	–FAEGX, Mutual Fund									
30	–FSOAX, Mutual Fund									
31	Met Life, Variable Annuity	A	Int.	J	T					
32	—BRBNDIN, Fund									
33	— BRLGCCO, Fund									
34	— FIXINT, Fund									
35	— STK IND, Fund									

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	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
Reeves, Carlton W.	04-27-10

VII. Page 3 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)									
36	ING 401(k)	D	Int.	N	T					
37	—ING PIMPCO, Fund									
38	– ING Strategic Alloc Growth, Fund									
39	—ING Index Plus Large Cap, Fund									
40	—ING Legg Mason Prtns Aggr Fund									
41	–ING Small Company Port, Fund									
42	–ING Oppenheimer Global, Fund									
43	College Savings									
44	–Scholars Edge (Aggressive Portfolio A)	A	Int.	E	T					
45	– MPACT (MS College Savings Plan		NONE							
46	Mass Mutual, Life Insurance	A	Int.	D	T					
47	BankPlus, Account	A	Int.	J	T					
48	First Commercial Bank, Account	A	Int.	J	T					
49	Liberty Bank, Account	A	Int.	J	T					
50	Statewide Fed. Credit Union, Account	A	Int.	J	T					
51										
52										

1 Income/Gain Codes: (See Col. B1, 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 Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001 - $100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=More than $50,000,000

3 Value Method Codes: (See Col. 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
	Reeves, Carlton W.	04-27-10

VII. Page 4 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)									
53									
54									
55									
56									
57									
58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									

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
	Reeves, Carlton W.	04-27-10

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

I. Positions

4. Immediate Past President	Magnolia Bar Association, Inc.
5. Director	North Congress Properties, LLC
6. Director	Mississippi Center for Justice
7. Director	Mississippi Workers Center for Human Rights
8. Director/Affirmative Action Officer	ACLU of Mississippi
9. Trustee	Irrevocable Trust I

*The CFGJ identified in No.2 above refers to its members of the board of directors as trustees. I have no responsibility over the management or holding assests.

* Irrevocable Trust I referred to in No. 9 is an unfunded trust; it was established to receive proceeds of a life insurance policy and the insured person is still living. The trust has no asset valued at more than a $1,000.

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., §01 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Carlton W Reeves Date 4-27-10

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		31	403	Notes payable to banks-secured			
U.S. Government securities-add schedule		1	476	Notes payable to banks-unsecured			
Listed securities-add schedule		212	313	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		179	524
Real estate owned-add schedule		383	750	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance		6	000				
Other assets itemize:							
IRAs		32	922				
Annuity		7	804				
401(k)		262	353				
Thrift Savings Plan		108	000				
Scholars Edge		46	000	Total liabilities		179	524
Mississippi College Savings Plan (MPACT)		11	666	Net Worth	1	074	163
Total Assets	1	253	687	Total liabilities and net worth	1	253	687
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a 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	$ 1,476.00
Listed Securities	
3M Company	8,524
Advanced Micro Devices	927
AIG	68
Analog Devices, Inc.	3,179
AT&T	5,224
Barclays PLC	2,485
Caterpillar, Inc.	4,169
Dell	376
Discover	373
Evergreen Asset Allocation Mutual Fund	75,247
Eagle Growth Capital Fund	2,624
First Commercial Bank	16,500
Goldman Sachs	5,297
Johnson & Johnson	7,355
Kroger	2,166
McDonald's	1,551
Merck & Co.	4,815
Microsoft	4,956
Morgan Stanley Ins. Muni. Inc. Trust	21,462
Morgan Stanley	1,465
Motorola	218
Motors Liquidation Co.	63
Pepsico	4,357
Pfizer	856
Procter & Gamble	7,994
Qualcomm	8,879
Radio One	320
Regions Financial Corp.	322
Tronox, Inc.	3
Trustmark CP	4,886
Walmart	6,081
Windstream	1,165
Yum Brands	8,456
Total Listed Securities	212,313

Real Estate Owned	
Personal residence	$ 250,000
¼ interest in North Congress Properties, LLC	133,750
Total Real Estate Owned	383,750
Real Estate Mortgages Payable	
Personal residence	$ 105,000
North Congress Properties, LLC	74,524
Total Mortgages Payable	179,524

AFFIDAVIT

I, Carlton W. Reeves, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4-26-10
(DATE)

Carlton W. Reeves
(NAME)

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 87696
MAXINE A. JACKSON
Commission Expires
Nov. 12, 2011
RANKIN COUNTY

Maxine A. Jackson
(NOTARY)

Senator DURBIN. Thank you so much, Mr. Reeves.

Now, we would like to go slightly out of order, because I know that Senator Inouye, who is the President Pro Tempore of the U.S. Senate and Chairman of the Senate Appropriations Committee was working diligently downstairs in an Appropriations Committee hearing and was unable to be at the beginning of this session, but I'd like to give him a chance now, if he would like to take the opportunity to say a few words on behalf of a nominee.

Senator INOUYE. I thank you very much, Mr. Chairman.

I would like to warmly welcome the honorable Magistrate Judge Leslie Kobayashi and her family. Her husband, Clarence Pacarro, and their sons, Cody and Luke.

I am here to express my full support for Judge Kobayashi's nomination to the district court of Hawaii. Judge Kobayashi's maternal great-grandparents emigrated from Fikolka (ph). My grandparents came from there, also, to work in the sugar fields of Hawaii. Her paternal grandparents immigrated from Hiroshima to work as night watchmen and run a small family business.

You will have to excuse my voice. That is what appropriations does to you.

[Laughter.]

Senator INOUYE. Judge Kobayashi's father was the first in his family to attend college and dental school, and, following his graduation, he served in the U.S. Army during the Korean War and was posted at Fort Dix, New Jersey, where Judge Kobayashi was born.

The family returned to Hawaii, where her father started a dental practice and her mother worked as an elementary school teacher in Hawaii's school system.

Judge Kobayashi excelled in her studies, attended Wesleyan College and Boston College School of Law.

Judge Kobayashi is an experienced lawyer, with over 25 years of experience in Hawaii in both civil and criminal law. She has served as a Federal magistrate judge for over 10 years on the court to which she has been nominated.

Judge Kobayashi is admired and respected by her colleagues on the Federal bench. She is well versed in the legal processes as a sitting magistrate and I am confident that she will be able to take the bench in a seamless and swift transition.

Judge Kobayashi is also well respected by both the plaintiff and defense bars. She is known for her fair and evenhanded manner, her knowledge of the law, and her commitment to the principle that every person has their day in court.

Despite her busy schedule, Judge Kobayashi continues to be active in bar association activities and community service. She lectures at the William S. Richardson School of Law at the University of Hawaii, served on the Hawaii State Bar Association board of directors, and served as vice chair for the magistrate judges executive committee for the ninth circuit.

Her community involvement includes being on the board of directors for the Friends of Judicial History Center, and serving on the board of directors for the Volunteer Legal Services of Hawaii.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00258 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Judge Kobayashi's application was reviewed by a merit selection panel that Senator Akaka and I established. She was deemed well qualified for the position.

Judge Kobayashi is the American dream and like so many others, hers is the story of hard work, perseverance and success, and I'm proud to support the nomination of Judge Leslie Kobayashi for the United States District Judge, District of Hawaii.

She is well qualified for the position and would bring honor to the court. I urge your swift confirmation.

Senator DURBIN. Thank you very much, Senator Inouye. We are honored that you would come join us at this committee, and I am certain that Judge Kobayashi is honored by your kind words.

Without objection, I am going to enter into the record a statement from Senator Inouye's colleague, Senator Akaka, strongly in support of your nomination, as well. You could not have two better or stronger friends in the U.S. Senate.

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

Senator INOUYE. Mr. Chairman, may I be excused?

Senator DURBIN. You are excused, and I know you have plenty to do. So thank you so much for being here, Senator Inouye.

Senator Kyl and I will ask a few questions. Most of you have gone through extensive interviews and reviews of your background. So if the questions do not go on for a great period of time, it is not a reflection on our interest. Many things have already been asked and we have that record, and some questions will be sent later, which we hope that you will attend to in a timely way.

Senator KYL. Besides, it is really hot.

Senator DURBIN. Senator Kyl has some problems with the heat from the lights here. So we are going to try to move this along, if we can.

Mr. Reeves, yours is an historic nomination. You are the first African-American nominated for a Federal judgeship in the State of Mississippi in 25 years, since Judge Henry Wingate was nominated by President Reagan in 1985.

Mississippi, as many know, has the highest percentage of African-Americans of any state in the Nation. So your nomination says a lot.

Can you talk to us about the importance of racial diversity on the Federal bench in Mississippi, given your personal experience growing up in Mississippi and your knowledge of how far your state has come?

Mr. REEVES. Thank you for the question, Senator Durbin. It is extraordinarily important that the judiciary reflects the population in the states. Judges serve several functions, role models to other lawyers, role models to students, role models to the people who come before the court.

People need to see that they have a chance; that they, too, can one day come to the great hall of the Senate and be nominated by a President to be a judge.

As past president of the Magnolia Bar Association, we trumpeted that notion. We spoke about the need for diversity throughout the State of Mississippi and actually throughout the country, because equal justice under the law, people need to believe that a cross-sec-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00259 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

tion of the community can serve as judges and that they can administer justice and that they will obey and respect the rule of law.

And those are just some of my thoughts, sir.

Senator DURBIN. I thank you for that. I have a question for the other three nominees, because you all share a background as prosecutors. And occasionally, Senator Kyl, I will have a request for visitation in Chicago from a group of criminal defense lawyers and they will say to me, "Durbin, you are a pretty good guy, but it seems like everybody you put on the bench is a former prosecutor. So when are you going to start looking for criminal defense lawyers so we can have a little balance on that bench?"

So I would like to ask you, Ms. Casper, when the criminal defense bar takes a look at your background, are they going to feel like it is an uphill battle when they go into your court?

Ms. CASPER. I don't believe so, Senator. Thank you for the question. Although I've spent a significant part of my career as a prosecutor, I think I certainly have a reputation of being a straight shooter who is fair and impartial and can be fair and impartial, if I'm so lucky as to be confirmed.

I would also say that the role of a prosecutor is to do justice and in order to properly discharge my duties as a prosecutor, I necessarily had to look across the—at the other side and the obligations of discovery disclosures and appropriate recommendations for disposition are things that I had to consider in my role as a prosecutor.

I would also say that I've spent a fair amount of my time working with criminal defense attorneys in Massachusetts, most recently on a cross-section of bar leaders, both criminal defense attorneys, prosecutors and law enforcement, on a wrongful conviction task force, where we worked cooperatively to look at ways to improve the judicial system so that we can avoid even the possibility of wrongful convictions.

So I think based on all of that, both my experience, as well as my reputation and commitment with working with folks on both sides of the aisle, I think I would be a fair and impartial judge.

Senator DURBIN. Ms. Kobayashi, as magistrate, have you dealt with many criminal cases and sentencing questions?

Judge KOBAYASHI. Thank you for that question. Yes, I have. And we have trials up to full misdemeanors as magistrate judges and handle all of the pretrial matters in felony cases.

So I think that experience serves me well in terms of dealing with both sides, in terms of prosecution and defense. And in the role of a judge, you quickly learn that you are nonpartisan; that you do need to look at both sides equally and with a keen eye to make sure that both sides follow the rules and are head fairly.

So I don't believe that will be a problem, but I appreciate the question.

Senator DURBIN. Mr. Chang, I do not know if you heard—you may have heard my earlier question to Judge Murguia about the crack/powder sentencing disparity, and this has been an issue which this Committee has addressed and we have considered for some time.

What experience have you had involving that type of sentencing or anything similar to it?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00260 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Mr. CHANG. Thank you for that question, Senator. I have prosecuted many crack cases, as well as powder cocaine cases. And so I have operated under this sentencing framework.

Senator DURBIN. And what is your experience? The notion is that it is particularly punitive, and if it is punitive, Congress wrote the law, the President signed it, and it is a law that, as a prosecutor, you would face.

But we have had, for instance, Federal judges come before the Judiciary Committee and talk about the problem it has created, particularly within the African-American community. They just feel that this disparate sentencing for this particular narcotic raises a serious question about whether there is justice in the system.

Have you felt that in the course of trials or prosecutions you have been involved in?

Mr. CHANG. Well, Senator, thank you for that question. In my experience, when the sentencing regime—the sentencing guidelines are mandatory, there was very little wiggle room. And I think as you stated, some Federal judges have expressed concern over that.

Now, of course, the sentencing guidelines are advisory and the Supreme Court ruled in a case, *Kimbrough* v. *United States*, that judges may indeed consider individual circumstances and deviate from that crack/powder disparity that you spoke of.

And if I'm fortunate enough to be confirmed, then I would operate under that framework, as well, where the guidelines, while important, are advice and not mandatary.

Senator DURBIN. Thank you.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

First, let me just comment generally that I was really moved by each of the nominees' introduction of members of their family, and it is very clear and I think it says something about the nominees themselves that they feel great inspiration from their families, their friends, those who cannot be here, those who have passed on, but who you remember fondly, and it is meaningful to us here.

I would also echo what Senator Durbin said, the lack of a 3-hour grilling here does not suggest that we do not care about your nominations. We have a lot of information in front of us. I know you want that grilling here until 8 tonight, but I just want to assure the members of the family that the fact that we do not spend as much time as we did on a nomination, for example, like Solicitor General Kagan, who has been nominated to the Supreme Court, certainly does not suggest lack of interest.

I, too, will be relatively brief, perhaps having a question or two for the record.

Senator Durbin raised a matter, and, Mr. Reeves, going back a little bit in time here, you mentioned your chairmanship of the Magnolia Bar Association, and I wanted to ask you a couple questions about a letter that you wrote at that time relative to the Southwick nomination.

Leslie Southwick was nominated to serve on the fifth circuit court of appeals, as you know, was confirmed, sits on that court today, in a bipartisan vote. But you wrote a pretty stern letter in opposition to his nomination, if I could quote just from a couple

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00261 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

pieces of that and then ask you some questions about that, and this was in 2007.

First of all, you talked about President Bush, and I will just quote this. You said, "President Bush has demonstrated an absolute disdain for appointing African-Americans to the Federal judiciary, particularly within the states representing the fifth circuit. Leslie Southwick's nomination continues a stark pattern of racial discrimination and racial exclusion in appointments by President Bush to the fifth circuit and to the Federal judiciary from Mississippi."

Now, do you still stand by that accusation made back in 2007?

Mr. REEVES. I'm sorry, sir. Yes. In 2007, I was the president of the Magnolia Bar Association and we represent—the Magnolia Bar Association was founded in 1955, because the African-American lawyers who were lawyers back then were precluded from being members of the Mississippi Bar Association.

So the Magnolia Bar Association has always been extraordinarily inclusive. It is bi-racial now and at all levels.

In 2007, we were advocating the need for diversity in the Federal judiciary in Mississippi. That was one of the main things that the Magnolia Bar Association itself was advocating, because in the 200 years that the fifth circuit has been in existence, there had only been two African-Americans who had been appointed to the fifth circuit.

In the time that the State of Mississippi had been into the Union, since 1817, there had been only one African-American appointed to the Federal judiciary. And in the last 20 years or so, there have been appointments, nominations to the Federal judiciary in Mississippi. I think the number had exceeded 15 or 17, if you include all the Federal judges there in Mississippi in 2007, and not—and there had only been one African-American appointed and he was appointed in 1985, which was over 20 years ago.

So as an advocate on behalf of the legal system, as an advocate on behalf of the Magnolia Bar Association, that's why those—those represent the comments that were made as my presidency of the Magnolia Bar Association.

Senator KYL. And I can appreciate that. My question really goes to a matter of judicial temperament, the way in which a person acts as a judge when—in fact, you made the point that a judge can be a role model; that both lawyers and others, litigants, who come before a court want to know they are treated fairly and, in that respect, if they see in the judges a reflection of the community, I think that is a good thing. I totally agree with your comment on that.

But would it not have been more judicious to say—if this was your opinion, and I will ask you whether it was. Judge Southwick is a fine man, a good lawyer, and would make a good judge. However, it is time that an African-American or some other minority member be appointed to the fifth circuit court of appeals.

Would that not have been a better way to approach this than opposing the nomination and, in fact, using pretty harsh language regarding Leslie Southwick himself?

Mr. REEVES. Well, thank you for the question. I know Judge Southwick. We worked together on some things with the American

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00262 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Inns of Court. We just disagreed, as president of the Magnolia Bar Association at the time, we just disagreed with the nature of the appointments that had been made throughout the fifth circuit, throughout the country at the time.

There had been a dearth of black or any minority candidates nominated by the President during the years of 2000 to 2008, and the Magnolia Bar made that one of its critical issues over the last several years.

I think the full context of my letter, I do think that in that context of the letter, I don't criticize Judge Southwick's abilities or anything of that nature.

And while the President had the prerogative to nominate a person of his choice, we thought, as the Magnolia Bar Association, that the Senate had an equal duty to make sure that it looked at the scope of the land and tried to encourage some diversity throughout the judiciary.

Senator KYL. Mr. Chairman, do you mind if I just do a follow-up question or two here, and then that will be it?

And I can understand. That is why I am asking, and, again, I ask this as a question that goes to your judicial temperament, how you will conduct yourself on the bench, and I think it is important.

It would have been one thing to say it is time that an African-American is nominated and confirmed for the fifth circuit court of appeals. But with regard to Leslie Southwick himself, and I will just quote another thing from the letter, you expressed concern that Judge Southwick's nomination could lead—and this is a quote—"could lead to an improperly narrow interpretation of the Constitution and the civil rights laws," which suggests to me that it—well, it is not just a suggestion.

You said that his nomination could lead to an improperly narrow interpretation of the Constitution and civil rights laws, meaning that he would interpret the laws in that way.

Was that really your view about him as an individual and do you still view him in that way, as a member of the fifth circuit?

Mr. REEVES. Thank you. I appreciate the question. The full context of that quote, I believe, that you're quoting from derives from a decision that Judge Southwick endorsed on the Mississippi court of appeals, wherein there was a fact dispute and some evidence that a supervisor at the Department of Human Services in the State of Mississippi referred to an employee, subordinate, as a "good old nigger." And we thought that the—we thought, as Magnolia Bar Association and others, that the constraints on which Judge Southwick and others placed on that evidence, where the employee appeals board did not recommend the termination of the supervisor, because they believed that the "good old nigger" quote that was used was not bad enough, because "good" and "old" modified the word "nigger."

And where I'm from, there is very little that can modify that word, and I do note that Judge Leslie Southwick—excuse me—Judge Leslie King, who is the African-American chief of the court of appeals, disagreed and wrote a strenuous dissent in that matter.

And ultimately, the decision that Judge Southwick ruled in favor of was overturned by the Mississippi Supreme Court. And again, the African-American judge on the Supreme Court wrote a concur-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00263 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

ring opinion, Fred Banks, someone whom I deeply admire and respect, really went through the why that word is so offensive for that particular agency and the fact that that supervisor was speaking for the agency itself, and that agency represents all of Mississippi.

Senator KYL. Mr. Chairman, if I could just ask one other question. You were on the board—or were on the board of the Mississippi Workers Center for Human Rights, its treasurer since 2008.

Are you still on the board of that organization?

Mr. REEVES. No, sir. I've since resigned.

Senator KYL. In 2001, there was a statement, called "statement of solidarity with migrants," and I wonder if you are familiar with that statement and if you had anything to do with that statement.

Mr. REEVES. I'm not familiar. I'm not familiar.

Senator KYL. Well, then I will not ask you a question here. What I might do is put some information about that in a question and then take a look at it. And if you knew anything about it, then you can answer the question; if not, then, obviously, you do not need to do that.

Mr. REEVES. Thank you, Mr. Senator.

Senator KYL. Mr. Chairman, in view of the time, that is all the questions I have of the nominees. Again, I congratulate all of you for your nominations and hope that we can move forward with the consideration of the nominations as soon as possible.

Senator DURBIN. Senator Kyl, thank you so much for being here. It is a session day when most people are heading out to another location, and thank you for your indulgence to be here at this moment.

I just want to put in the record that I had a chance to read the letter that Mr. Reeves sent on behalf of the Magnolia Bar Association and it refreshed my memory about the controversy associated with Leslie Southwick's nomination, not just the racial composition of the courts in Mississippi, but, also, that particular case, which was very controversial.

The only exceptions I would have in your letter are, in two different places, you refer to me in a positive way and——

[Laughter.]

Senator DURBIN. That may destroy your credibility with some. It is going to help you with me.

So I thank all of you for being here today, and particularly to the family and friends who have joined in this historic occasion for each one of the nominees.

The Senate Judiciary Committee is a Committee that Senator Kyl and I have been honored to serve on for quite a few years and the men and women who pass through this Committee hall, sit at this table, answer these questions are ultimately, in the vast majority of cases, then given an awesome responsibility to serve for life in the Federal judiciary and to make decisions relative to our laws and justice every single day.

So we take this very seriously and we certainly acknowledge each of you brings a wealth of experience to this, personal and legal experience, and we accept you at your word that, if given the chance to serve in the Federal judiciary, you will continue to use

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00264 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

your very best judgment, consistent with the laws of our country and our Constitution.

At this point, I am going to ask that the Judiciary Committee stand in adjournment. If written questions are sent, if you will attend to them in a timely manner, we would appreciate it very much.

Thanks for being here, and thanks to all your family and friends.

[Whereupon, at 5:26 p.m., the meeting was adjourned.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

Responses of Denise Jefferson Casper
Nominee to be United States District Judge for the District of Massachusetts
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: I respectfully do not agree with this perspective. The Constitution, as interpreted by the Supreme Court, was written to withstand the course of time and, with amendments over time, it has done so.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

   a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes.

   b. **Why or why not?**

      Response: In Lopez and Morrison, the Supreme Court noted that its rulings in those cases were consistent with its earlier Commerce Clause precedent and it noted the same in its later decision, Gonzales v. Raich, 545 U.S. 1, 23-25 (2005).

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: Justice Kennedy's analysis in Roper v. Simmons constituted the majority opinion in that case. If I am confirmed, I will be bound to follow Supreme Court precedent and will do so.

   a. **How would you determine what the evolving standards of decency are?**

      Response: The Supreme Court has ruled that "evolving standards of decency" are part of the legal framework for determining whether a criminal penalty rises to the level of cruel and unusual punishment under the 8th Amendment. If I am fortunate enough to be confirmed by the Senate, I will follow the precedent that the Supreme Court has set.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

Response: No. The Supreme Court has held that the death penalty is constitutional except in certain, limited instances. Accordingly, a federal district court judge, bound to follow Supreme Court precedent, could not rule that the death penalty was unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: If I am confirmed and a constitutional challenge to the death penalty in a particular case was raised before me, I would apply and follow the applicable precedent of the Supreme Court and the Court of Appeals for the First Circuit.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: Contemporary foreign or international laws or decisions are not binding precedent for any court of the United States. I would not rely on such law unless the precedent of the Supreme Court or the Court of Appeals for the First Circuit required me to do so.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: No. I would only look to foreign law if the precedent of the Supreme Court or the Court of Appeals for the First Circuit required me to do so.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: None, unless the Supreme Court or the Court of Appeals for the First Circuit said otherwise.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, except to the extent that the precedent of the Supreme Court or the Court of the Appeals for the First Circuit requires otherwise.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00267 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.231

Responses of Denise Jefferson Casper
Nominee to be United Stases District Judge for the District of Massachusetts
to the Written Questions of Senator Jeff Sessions

1. **You were part of task force formed to study ways to improve the Boston criminal justice system in 2008 and 2009. The Task Force recommended legislation that would allow "postconviction access to and testing of forensic evidence and biological material by defendants who claim factual innocence" and require the retention of biological material from criminal cases.**

   a. **Do you believe individuals have a postconviction right to access and test forensic evidence and biological material relevant to their case?**

      Response: No, as the Supreme Court in District Attorney's Office for the Third Judicial District v. Osborne, 129 S. Ct. 2308 (2009) recognized, there is no freestanding right to post-conviction access or testing of biological evidence. Osborne, 129 S. Ct. at 2320-23 (rejecting that Osborne had "a freestanding and far-reaching constitutional right" to such access and testing, but noting that forty-six states and Congress have enacted statutes regarding access and testing to DNA evidence under certain circumstances). If confirmed, I will follow the precedent set by the Supreme Court.

      i. **If so, do you believe this is a constitutional right?**

         Response: No.

      ii. **If so, from where in the Constitution does this right originate?**

         Response: Not applicable.

   b. **On June 18, 2009, the Supreme Court issued an opinion in *District Attorney's Office for the Third Judicial District v. Osborne* (129 S. Ct. 2308). The petitioner, who had been charged with kidnapping and sexual assault, sought to compel release of biological evidence for testing. The Supreme Court, in an opinion by Chief Justice Roberts, held that *Brady* does not extend to postconviction relief and that there is no "freestanding right to access DNA evidence for testing."**

      i. **Do you believe this decision was wrongly decided?**

         Response: No.

      ii. **Will you be able to apply this precedent even though you may personally disagree with it?**

         Response: Yes.

2. **As you know, now that the Sentencing Guidelines are advisory rather than mandatory, a judge may impose virtually any sentence ranging from probation to the statutory maximum.**

   a. **Given your experience as a prosecutor, what level of deference will you show to the guidelines now that they are only advisory?**

   Response: The Sentencing Guidelines are an important tool in maintaining consistency in sentencing for similarly situated defendants convicted of similar crimes. Although the guidelines are now advisory after the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), they remain the "starting point and the initial benchmark" for a sentencing court. Gall v. United States, 552 U.S. 38, 49 (2007). If confirmed, I shall apply and follow the precedent established by the Supreme Court and the Court of Appeals for the First Circuit.

   b. **Do you commit to follow the guidelines?**

   Response: I will do so within the framework established by the binding precedent of the Supreme Court and the Court of Appeals for the First Circuit.

   c. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

   Response: Yes.

3. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

   "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

   a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

   Response: Given that the President nominated me for the U.S. District Court for the District of Massachusetts, I assume that I must have met his criteria for federal judges.

   b. **During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

   Response: I do.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00269 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.233

c. What role do you believe empathy should play in a judge's consideration of a case?

Response: I do not believe that empathy should play a role in a judge's consideration of a case. A judge must base his/her decisions on a fair and impartial application of law to the particular facts of the case and, if confirmed, I will do so.

d. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: I do not.

i. If so, under what circumstances?

Response: None.

ii. Please identify any cases in which you've done so.

Response: None, I have not served as a judge.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: None, I have not served as a judge.

4. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on July 22, 2010. I reviewed the questions and the materials that the questions referenced and I drafted my responses. I then had discussion with an attorney from the Department of Justice. I finalized my responses and requested that the Department of Justice submit them on my behalf to the Senate Judiciary Committee on July 26, 2010.

5. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00270 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.234

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

   a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes.

   b. **Why or why not?**

      Response: In *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the Supreme Court explained that *Lopez* and *Morrison* were consistent with prior Commerce Clause precedent because the statutes at issue in *Lopez* and *Morrison* did not regulate economic activity.

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: Justice Kennedy's analysis comprised an opinion of a majority of the Supreme Court, and if confirmed as a district judge, I would be bound to follow that precedent.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I would follow any applicable Supreme Court case law and Seventh Circuit precedent. In *Roper*, the Supreme Court's analysis began with legislative enactments and state practice, followed by a determination of the proportionality of the punishment at issue. 543 U.S. 551, 563-74.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

66720.235

Response: The Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, and thus a district judge could not make such a finding.

c. What factors do you believe would be relevant to the judge's analysis?

Response: Because the Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, a district judge would have no basis to apply any factors to ignore that binding precedent.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: As a judge of the United States courts, if confirmed I would be bound to follow the laws of the United States, not to resolve legal problems by reference to foreign countries.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Under no circumstances would I do so, unless the binding decisions of the Supreme Court or Seventh Circuit required otherwise.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the binding decisions of the Supreme Court or Seventh Circuit required otherwise.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00272 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.236

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Jeff Sessions

1. **You have served for over ten years as a federal prosecutor. As you know, now that the Sentencing Guidelines are advisory rather than mandatory, a judge may impose virtually any sentence ranging from probation to the statutory maximum.**

   a. **Given your experience as a federal prosecutor, what level of deference will you show to the guidelines now that they are only advisory?**

      Response: Although the Sentencing Guidelines are only advisory, the Supreme Court requires that district judges consider the Guidelines as "the starting point and the initial benchmark" in every sentencing, *Gall v. United States*, 552 U.S. 38, 49 (2007), in order to achieve Congress's "basic goal in passing the Sentencing Act . . . to move the sentencing system in the direction of increased uniformity," *Booker v. United States*, 543 U.S. 220, 253 (2005).

   b. **Do you commit to follow the guidelines?**

      Response: Based on Supreme Court and Seventh Circuit precedent, in every sentencing I would give "serious consideration" to the Guidelines, *Gall v. United* States, 552 U.S. at 46, which "remain an essential tool in creating a fair and uniform sentencing regime across the country," *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005).

   c. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

      Response: Yes.

2. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

   "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

   a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

      Response: Based on the fact that the President submitted my nomination, I assume that I fit his criteria for selection of federal judges. If confirmed, I would base my decisions solely on the facts and binding legal authorities.

66720.237

b. During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe empathy should play in a judge's consideration of a case?

Response: I believe that a judge must treat all litigants and lawyers with respect, and also must strive to understand their respective arguments, but empathy plays no role in deciding a case. Cases must be decided solely on the facts and binding legal authorities.

d. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: None.

ii. Please identify any cases in which you've done so.

Response: I have not served as a judge, and thus I have not had occasion to indulge my own subjective sense of empathy in determining what the law means. But if confirmed, I would apply only binding legal authorities in determining what the law means, which is the same approach I have adopted as a practicing lawyer.

iii. **If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.**

Response: I have not served as a judge, and thus I have not had occasion to set aside my own subjective sense of empathy and rule based solely on the law. But if confirmed, I would set aside subjective views and would apply only binding legal authorities in rendering decisions, and I have adopted the same approach as a practicing lawyer in determining what legal positions to advance.

3. Please describe with particularity the process by which these questions were answered.

Response: I received a copy of these questions by email from Department of Justice (DOJ) staff on July 22, 2010, and I drafted answers to the questions. I then had discussions with DOJ staff and provided a final version for transmittal to the Committee.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00274 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.238

4. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00275 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.239

Responses of Leslie E. Kobayashi
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Tom Coburn, M.D

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: The Constitution is a permanent framework for the principles of American law. I do not agree with the perspective that the Constitution evolves as society interprets it.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

   a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes.

   b. **Why or why not?**

      Response: The Supreme Court addressed, in *Gonzales v. Raich*, 545 U.S. 1, 17-23 (2005), that *Lopez* and *Morrison* are consistent with its earlier Commerce Clause decisions.

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: Justice Kennedy's opinion was the Supreme Court's majority decision. Supreme Court decisions are binding upon all lower federal courts and I would follow Supreme Court precedent in my rulings and decisions.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I would look to Supreme Court and Ninth Circuit decisions to make the determination.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

66720.240

Response: The Supreme Court has consistently held otherwise. Judges in lower federal courts are bound to follow Supreme Court precedent and therefore I do not think that a judge could find under current Supreme Court decisions that the death penalty is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: As directed by the Supreme Court in *Graham v. Florida*, __ U.S. __, 130 S.Ct. 2011, 2022 (2010), the factors to be considered in evaluating whether a state's death penalty law is constitutional would be the "'objective indicia of society's standards, as expressed in legislative enactments and state practice' .... [and] the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose, ..." (citations omitted).

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, unless the Supreme Court or the Ninth Circuit directs otherwise.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: In interpreting American law and the Constitution, it is presently not appropriate to look to foreign countries for solutions. It would only be appropriate if the Supreme Court directs that it be done.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I cannot think of any circumstances in which I would consider foreign law to interpret the Constitution, unless directed to do so by the Supreme Court.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No, unless the Supreme Court directs otherwise.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00277 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.241

Responses of Leslie E. Kobayashi
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Jeff Sessions

1. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

> **"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."**

a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

Response: Due to President Obama's nomination of me, I assume that I meet his criteria for federal judges based upon my legal, judicial and personal experiences during my 27 years as a prosecutor, civil litigator, and United States magistrate judge.

b. **During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

Response: Yes.

c. **What role do you believe empathy should play in a judge's consideration of a case?**

Response: Empathy is an important component of good judicial temperament. In deciding a case, however, empathy plays no role. A judge must apply the law to the facts dispassionately and without bias toward or against any person or party.

d. **Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No.

i. **If so, under what circumstances?**

Response: None.

ii. **Please identify any cases in which you've done so.**

Response: None.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: The parties in a civil case consented to have me, as a United States magistrate judge, serve as the trial judge. The plaintiff was the mother of a disabled child who sued the State of Hawaii's Department of Education for intentionally discriminating against her and her son, and for retaliating against her for advocating for her child's special education services. Her testimony was compelling but the evidence presented did not meet what the law requires. As a result, I granted judgment as a matter of law in favor of the defendant, and against the plaintiff.

2. Please describe with particularity the process by which these questions were answered.

Response: The questions were forwarded to me by the Department of Justice. I reviewed the questions, did research, and prepared the responses. I had discussions with the Department of Justice, and sent my final responses to them with a request that they file my responses with the Senate Judiciary Committee.

3. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00279 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.243

Responses of Mary H. Murguia
Nominee to be U.S. Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No. To the extent that by "living" document, you mean a Constitution that has an evolving interpretation unmoored from the text, I disagree with that perspective. I believe the Constitution is a fixed document whose text may be changed only through the amendment process.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

   a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes.

   b. **Why or why not?**

      Response: Because the Supreme Court has so held. In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court explained that *Lopez* and *Morrison* were consistent with prior Commerce Clause precedent because the statutes at issue in *Lopez* and *Morrison* did not regulate economic activity.

3. **In Roper v. Simmons, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

   Response: Justice Kennedy's majority opinion is accorded the weight of precedent. Therefore, it is a decision that I am bound to follow and do not think it would be appropriate for me to comment on Justice Kennedy's analysis.

   a. **How would you determine what the evolving standards of decency are?**

      Response: I would follow Supreme Court precedent and apply the analysis that the Supreme Court has held should be applied.

   b. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

66720.244

Response: The Supreme Court has held that the death penalty is constitutional as a general matter. If confirmed, I would follow and apply that precedent.

c. What factors do you believe would be relevant to the judge's analysis?

Response: I would follow Supreme Court precedent to determine the relevant factors.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: There may be instances in which international law, which involves the interpretation of international contracts or the obligations of the United States under a treaty, may be relied on to resolve disputes involving such matters. Foreign law of other countries, by contrast, should not be relied on to determine the meaning of the United States Constitution.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: It is appropriate to look to foreign law only if our own domestic law requires that I do so.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I cannot currently envision any particular circumstance where I would consider foreign law when interpreting the Constitution, but certainly would do so if the Supreme Court requires me to do so.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I cannot currently envision any particular circumstance where I would consider foreign law when interpreting statutes, but certainly would do so if the Supreme Court requires me to do so.

d. Would you consider foreign law when interpreting the Eighth Amendment?

Response: If confirmed to the Ninth Circuit, I would adhere to Supreme Court precedent in this and all other areas of the law, as I have done as a district judge.

e. Other amendments?

Response: If confirmed to the Ninth Circuit, I would adhere to Supreme Court precedent in all areas of the law, as I have done as a district judge.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00281 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.245

Responses of Mary H. Murguia
Nominee to be U.S. Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Jon Kyl

1. **A May 10, 1996 report of the television program 20/20 mentioned you in an investigatory report into then-U.S. Attorney Janet Napolitano's refusal to seek a search warrant in a child pornography case. This particular search warrant was related to an investigation called "Operation Special Delivery." In response to a written question Senator Grassley sent you following your confirmation hearing for the District Court, you described this operation as one "designed to target for prosecution those who possessed, produced and trafficked in child pornography." The search warrant in question concerned a man named James Norman Moore, who allegedly ordered child pornography from the undercover postal inspectors conducting Operation Special Delivery.[1] Mr. Moore's name arose in the investigation in connection with the Spartacus organization, which apparently was an organization that had distributed both child pornography and legal pornography involving adult males.**

   a. **At that time, you were the Deputy Chief of the Criminal Division of the U.S. Attorney's Office and supervised the violent crime section, which prosecuted child pornography offenses. Was it your responsibility to review requests for search warrants? If yes, did you review this particular request for a search warrant?**

      Response: As Deputy Chief of the Criminal Division of the United States Attorney's Office for the District of Arizona, I supervised the Violent Crime Section, which prosecuted sexual crimes against children, including child pornography. I supervised the Assistant United States Attorney ("AUSA") assigned to Mr. Moore's case. As Deputy Chief, it was my role to review all search warrants in the Violent Crime Section and to provide guidance to AUSAs with respect to the issuance of search warrants. Along with the Criminal Chief and the line AUSA, I did review the specific request for a search warrant related to Mr. Moore.

   b. **Please explain your decision about whether the search warrant sought in that case should have been approved.**

      Response: It was my view, and that of the United States Attorney's Office for the District of Arizona, that the investigation had not yet developed sufficient information to support a search warrant that would lead to a successful prosecution resulting in Mr. Moore's conviction. My view at the time was that the prosecution of Mr. Moore would have been more likely to succeed if the case agents could have obtained additional evidence of guilt, and that further factual

---

[1] Amy Silverman, *20/20 Out of Focus: News Report Critical of Arizona's U.S. Attorney Omitted Exculpatory Facts*, PHOENIX NEWS TIMES, May 23, 1996.

66720.246

development in the case would have been prudent and important, especially in light of the prospect of an entrapment defense.

2. According to a post on the Wolters Kluwer "Judiciary Watch" website:

> **"Lawyers interviewed for the *Almanac of the Federal Judiciary* said the following about Murguia: 'She is a fast learner with excellent legal skills.' 'Her legal ability is much stronger on the criminal side than civil.' 'She is always polite and courteous to all.' 'She has an ever so slight leaning toward the underdog or the plaintiff [in civil cases].' 'The government gets most of the close calls in trial. She has a strong pro-government bias. She makes it tough for criminal defense lawyers.'"[2]**

Please respond.

Response: Bias or favoritism has no place in our judicial system, and I endeavor to provide all litigants that appear before me with equal consideration under the law. I believe that my record as a district court judge reflects my commitment to resolving legal questions by applying controlling precedent to the facts at issue.

Although my own personal experience as a litigator was in criminal law, during my ten years on the district court bench, I have presided over a wide range of civil matters, including multi-district litigation and other complex matters. I believe that my record reflects that I have the legal skills, ability and experience to preside over all types of cases, both civil and criminal, in a fair and just manner.

[2] Judge Mary H. Murguia Nominated to 9th Circuit Court of Appeals, http://www.judiciarywatch.com/2010/04/judge-mary-h-murguia-nominated-to-9th-circuit-court-of-appeals.html (last visited July 12, 2010).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00283 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.247

Responses of Mary H. Murguia
Nominee to be U.S. Circuit Judge for the Ninth Circuit
To the Written Questions of Senator Jeff Sessions

1. At a June 27, 2004 Conference event, you said:

> **"[i]t is very important that the bench reflect the people it judges, and we have more Latinos in positions on the bench, but still not enough. And I think it is very important to have the bench reflect the community, and it is also important for people like me to remember that it's obviously – your intellect and your character contribute in defining who you are, but I also think that your heritage and your culture is key, and that's what makes the person who is the judge, and who is invoking sentences or making decisions."**[1]

a. Do you believe it is proper to consider the ethnicity of a judge and the ethnic makeup of the community in selecting federal judges?

Response: I believe it is important that the public has confidence and trust in the judiciary. I believe a judiciary reflecting the people it serves inspires confidence in our system of justice. Everyone who appears before a judge should feel that they are a participant in a fair and just process, even when the judge rules against them. This is the notion I was trying to convey at the conference.

b. What role, if any, do you think diversity should play in the composition of the judiciary?

Response: I believe it is important that the federal bench reflect the American public, as this reinforces confidence in this nation's courts. I strongly believe that a judge's personal background should never influence his or her decisions.

c. How can litigants know that they are being treated fairly if a judge's heritage and culture is key to imposing sentences and making decisions, rather than the application of the law to the facts?

Response: A judge's heritage and culture should never play a role in a judge's determination of a case, and I did not intend to suggest it should. Judges should base their decisions solely on the law and the facts presented.

d. On July 17, 2007, President Obama made the following comment:

> **"You look at the case law, and most of the time the law is pretty clear -- 95% of the time. Justice Ginsburg, Justice Thomas, Justice Scalia -- they're all gonna agree on the outcome. But it's those 5% of the cases that really count.**

[1] DVD Video: National Conference of La Raza, Annual Conference Latinas Brunch, Phoenix, AZ (Jun. 27, 2004) (43:00-44:00).

66720.248

And in those 5% of the cases what you got to look at it is: What is in the justice's heart? What's their broader vision of what America should be? You know, Justice Roberts said he saw himself just as an umpire. But the issues that come before the court are not sport. They're life and death. And we need somebody who's got . . . the empathy to recognize what it's like to be a young, teenaged mom; the empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

Considering your statement that your heritage and culture make "the person who is the judge, and who is invoking sentence or making decisions," do you agree that it is important that a judge have "the empathy to recognize what it's like to be a young, teenaged mom" or "the empathy to understand what it's like to be poor, or African American, or gay, or old?"

Response: A judge must be committed to the rule of law. As a district court judge, it is not uncommon for me to see human drama unfold in the courtroom. I recognize when victims of crime who appear before me have suffered devastating loss or injury. I also recognize when criminal defendants have had a profound lack of support, moral guidance, or opportunity. But as a judge, it is important that everyone who appears before me is treated fairly, and that my decisions are not based on sympathy or emotion. I decide cases based upon the facts presented by the parties and legal precedent that governs the dispute. My decisions are not based on empathy.

2. **In *Center for Biological Diversity v. Kempthorne*, No. CV 07-0038-PHX-MHM, 2008 WL 659822 (D. Ariz. Mar. 6, 2008), you entered an order enjoining the U.S. Department of Fish and Wildlife's attempt to delist the Desert bald eagle as an endangered species along with all other bald eagles. You found the agency acted arbitrarily and capriciously in declining to undertake a full review of whether the Desert bald eagle should be treated separately,[2] and your decision was based on the fact that internal government scientists disagreed on the matter and that the agency had impermissibly consulted with the Arizona Game & Fish Department.[3] The decision is somewhat unusual in that you chose to enjoin the agency's action, rather than remand the matter for further administrative proceedings. In doing so, you acknowledged that "the ordinary remedy in finding an agency's action arbitrary and capricious is to remand for further administrative proceedings, and that [the court] can order equitable relief or remand with specific instructions only in rare circumstances." Nonetheless, you found the bald eagle case "was one of those rare circumstances" because "[t]he discrete population of Desert bald eagles, which the FWS acknowledges can be easily cordoned off and is still particularly vulnerable to habitat threats, should not face increased risks to its existence prior to a lawful**

[2] *Id.* at *12.
[3] *Id.*

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00285 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.249

decision on Plaintiffs' petition to list the Desert Bald eagle [separately from other bald eagles]."[4]

a. Please explain what standard you applied in this case to determine that equitable relief was warranted, rather than a remand of the matter to the agency for further administrative proceedings.

Response: In *Center for Biological Diversity v. Kempthorne*, I determined that the U.S. Fish and Wildlife Service's August 2006 90-day finding that the Desert bald eagle population did not qualify as a distinct population segment was arbitrary and capricious under the Administrative Procedure Act ("APA"), 5 U.S.C. § 702 *et seq*. In their complaint, the plaintiffs requested the specific equitable relief that was ultimately awarded. In deciding to grant the requested relief, I applied relevant Ninth Circuit case law concerning the issuance of injunctive relief in environmental cases, specifically, *Idaho Watersheds Project v. Hahn*, 307 F.3d 815 (9th Cir. 2002), and *Earth Island Inst. v. Hogarth*, 494 F.3d 757 (9th Cir. 2007). After considering these binding Ninth Circuit precedents, along with several persuasive federal district court opinions, I determined that equitable relief was required to maintain the status quo with respect to the Desert bald eagle population at the time the U.S. Fish and Wildlife Service made its arbitrary and capricious 90-day finding. The status quo at the time was that the Desert bald eagle was listed as threatened under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq*. Thus, I determined that it would be appropriate for the Desert bald eagle population to remain listed as threatened under the ESA until the U.S. Fish and Wildlife Service was able to engage in a status review. The parties did not request that I reconsider my ruling and did not attempt to appeal my decision. Because the case is currently ongoing, and because the U.S. Fish and Wildlife Service has filed a motion to dissolve the injunction after completing the status review and 12-month finding, it would be inappropriate for me to offer any additional comments on this matter.

b. I understand that, in this case, you determined the agency had misapplied the standard prescribed for the determination in question, but do you generally believe that the determination of an administrative agency charged with regulating and administering a specialized area should be deferred to by Article III Courts?

Response: I understand that the decisions of an administrative agency are entitled to deference so long as the agency is not acting outside the scope of its statutory authority or inappropriately within that scope.

c. Do you believe any personal views you hold played a role in your decision that the case was a "one of those rare circumstances" where an injunction against agency action was warranted, rather than a reversal and remand for further administrative proceedings?

[4] *Id.* at *11.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00286 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.250

Response: No. My March 2008 decision in this case was guided solely by controlling Ninth Circuit precedent as applied to the facts presented by the parties. My personal views do not influence my decisions in my cases.

3. Please describe with particularity the process by which these questions were answered.

Response: I reviewed relevant materials, case law, and my previous orders, including the summary judgment order I issued in March 2008 in *Center for Biological Diversity v. Kempthorne*. I then drafted answers and had discussions with the United States Department of Justice. I finalized my answers and instructed the Department to submit them on my behalf to the Committee.

4. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00287 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.251

Responses of Carlton W. Reeves
Nominee to be United States District Judge for the Southern District of Mississippi
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No. The Constitution is a document that is circumscribed by its text and deference must be accorded to its text. The Constitution can only be changed through the amendment process.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: No.

3. **Do you believe judicial doctrine rightly incorporates the "evolving understandings of the Constitution forged through social movements, legislation, and historical practice"?**

   Response: No. I believe that judicial doctrine is governed stare decisis.

4. **Do you believe empathy is "an essential ingredient for arriving at just decisions and outcomes" and should play a role in a judge's consideration of a case?**

   Response: No. Empathy should play no role in a judge's consideration of a case.

5. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

   a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

      Response: Yes.

   b. **Why or why not?**

66720.252

Response: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the "larger context of modern-era Commerce Clause jurisprudence."

6. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: Justice Kennedy's concurring opinion provides the controlling precedent in this case. My personal views do not matter as all district judges are bound by the decisions of the United States Supreme Court, and if confirmed, I will follow Supreme Court precedent.

   a. **Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"**

   Response: My understanding of Supreme Court precedent is that *Roper v. Simmons*, 543 U.S. 551, 560 (2005) states that "[t]he prohibition against 'cruel and unusual punishments,' like other expansive language in the Constitution must be interpreted according to its text, by considering history, tradition and precedent, and with due regard for the it purpose and function in the constitutional design."

   b. **How would you determine what the evolving standards of decency are?**

   Response: As a district judge, if confirmed, I would be bound by the law and the facts presented before me as well as the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

   c. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

   Response: No. The United States Supreme Court has declared that capital punishments is a constitutionally sanctioned punishment in many circumstances.

   d. **What factors do you believe would be relevant to the judge's analysis?**

   Response: The only factors that must be relevant to a district judge's analysis are those dictated by the United States Supreme Court and the Fifth Circuit Court of Appeals.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00289 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.253

7. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

   Response: No.

   a. **Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?**

      Response: As a district judge, it is only appropriate if required under the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

   b. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: The only instance in which I would consider foreign law when interpreting the Constitution is if United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates that I must consider foreign law when interpreting the Constitution.

   c. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

      Response: No, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

   d. **Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

      Response: No, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

8. **As you noted in your testimony, the Magnolia Bar Association has a storied history and the noble goal of striving for justice for all Mississippians. In 2007, in your capacity as President of the Magnolia Bar Association, you wrote a letter of opposition to President Bush's nomination of Leslie Southwick to the Court of Appeals for the Fifth Circuit. In that letter, you stated that your reason for opposing him was that his nomination continued "a stark pattern of racial discrimination and racial exclusion in appointments by President Bush to the Fifth Circuit and to the federal judiciary from Mississippi ... [and] Judge Southwick's record as a state court of appeals judge in Mississippi suggests that he is not the right person for the Fifth Circuit Court of Appeals at this time in our history, and that his presence there could lead to an improperly narrow interpretation of the constitution and the civil rights laws."**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00290 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.254

You also said you "question whether Judge Southwick will properly enforce the law when it comes to the rights of those who are unpopular and who are marginalized by the political process." You continued that you hoped President Bush would "reconsider and perhaps nominate someone who [would] add to the Fifth Circuit's stature, diversity, and sensitivity to the need to enforce fully the civil rights laws."

a. **Judge Southwick was confirmed to the Fifth Circuit by a bipartisan vote of 59-38. Do you believe his presence on the Fifth Circuit has lead to an "improperly narrow interpretation of the constitution and the civil rights laws?"**

   Response: No.

b. **Do you believe Judge Southwick has "properly enforce[d] the law when it comes to the rights of those who are unpopular and who are marginalized by the political process?"**

   Response: Yes.

c. **Do you believe Judge Southwick has added to the "stature" of the Fifth Circuit during his almost three years on the court?**

   Response: Yes.

d. **Do you believe he should have been confirmed to the Fifth Circuit?**

   Response: No.

e. **Do you stand by your earlier statements?**

   Response: Yes.

f. **If you are confirmed to the District Court for the Southern District of Mississippi and a case you decide is appealed, Judge Southwick could sit on the three-judge panel that reviews your decision. Given your strong criticism of his nomination, what assurances can you give the Senate that you will accept the legitimacy of a ruling that he authors or with which he concurs if a majority the panel comes to a different conclusion in a case than you did?**

   Response: I have great respect for Judge Southwick. I will follow and respect the precedent of the Fifth Circuit Court of Appeals, no matter the authors or members of the panel.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00291 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.255

9. In the 2007 letter, you claimed "the Senate and its judiciary committee must ensure that the nominations do not form a pattern that is racially discriminatory in purpose or effect."

a. Do you believe this committee could properly reject a nominee because it believes that nominee was chosen because of his or her race?

Response: The United States Senate has the Constitutional role and duty of providing advice and consent to the President on his judicial nominations, and I believe the Senate can reject a nominee for any reason.

b. Is it your contention that the United State Senate could properly vote to reject an otherwise qualified judicial nominee, if that nominee's race would create or continue a perceived racial imbalance on a court?

Response: Yes. The advice and consent clause of the Constitution does not restrict the Senate's reasoning in performing this function.

i. If not, then why did your letter state "we ask that you not approve this nomination [of Mr. Southwick], but instead allow President Bush to reconsider and perhaps nominate someone who will add to the Fifth Circuit's statute, diversity, and sensitivity to the need to enforce fully the Civil Rights Laws"? Please explain your statement.

Response: Not applicable.

10. In that same letter, you said the Fifth Circuit has applied a "narrow and overly technical interpretation of the constitution and the civil rights law." Please list all the cases issued by the Fifth Circuit, either *en banc* or by a three-judge panel, that you believe applied a "narrow and overly technical interpretation of the constitution and the civil rights law" and explain why you believe they were "narrow and overly technical."

Response: As a candidate for a district judgeship in the Fifth Circuit, I believe it would be disrespectful and inappropriate for me to criticize that court's recent decisions. If confirmed, my personal views will not play a role in my jurisprudence. I will follow Fifth Circuit precedent and the precedent of the United States Supreme Court.

11. At your hearing, when asked about the importance of racial diversity on the federal bench, you said it is "extraordinarily important that the judiciary reflects the population in the states," that "[p]eople need to see that they have a chance," and "people need to believe ... that [judges] can administer justice and that they will obey and respect the rule of law."

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00292 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.256

a. Do you believe the courts should contain a percentage of minority judges that are proportionate to the percentage of minorities in the community?

Response: No.

b. Do you believe presidents should employ affirmative action principles in the selection of federal judges?

Response: I believe that the President, as the holder of the Constitutional authority to nominate federal judges may employ whatever criteria he or she desires in selecting persons whose nominations are then forwarded to the United States Senate for its consideration.

c. Do you believe there is a relationship between a judge's race and the legitimacy of his rulings?

Response: No.

d. Do you believe there is a relationship between a judge's race and the *perceived* legitimacy of his rulings?

Response: No.

e. If justice is blind, why do you think people doubt that they "have a chance" in court if a non-minority judge is deciding their case?

Response: I do not think that people doubt that they "have a chance" if a non-minority judge is deciding their case.

f. Do you personally believe people do not "have a chance" in court if a non-minority judge is deciding their case?

Response: No.

g. Why do you think people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would?

Response: I do not think that people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would.

h. Do you believe non-minority judges will not "obey and respect the rule of law" to the same extent that a minority judge will?

Response: No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00293 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.257

i. If confirmed, would your race, the race of the parties or the lawyers before you, or any racially sensitive evidence or arguments play a role in your judicial decision-making? If so, how?

Response: No.

j. What exactly did you mean by these statements?

Response: My statement was intended to mean that I believe that minority judges can serve as role models to the public at-large and particularly members of the minority community who share the same race or sex, and have the opportunity to inspire minority members of the community to believe that they too could "have the chance" to sit on the federal bench.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00294 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.258

Responses of Carlton W. Reeves
Nominee to be United States District Judge for the Southern District of Mississippi
to the Written Questions of Senator Jeff Sessions

1. **According to your questionnaire, you have been a board member of the Mississippi Workers' Center for Human Rights since 2006, and its treasurer since 2008. On December 18, 2001, that organization signed on to a "Statement of Solidarity With Migrants." The entirety of that statement is reproduced below:**

Statement of Solidarity With Migrants
on the United Nations' International Day of Solidarity
with Migrants, December 18, 2001
prepared by the National Network for Immigrant and
Refugee Rights

Today, to observe the second United Nations International Day of Solidarity with Migrants, we stand together to call upon the U.S. government to uphold the rights of all immigrants and refugees. In the wake of heightened attacks against immigrant communities since September 11, 2001, we call for an immigration policy built on the principles of dignity, justice, and equality that uphold the civil and human rights of all people, regardless of their race, religion, ethnicity, national origin, gender, sexual orientation, disability, immigration or citizenship status.

During the past three months, we have witnessed the devastating effects of fear, racism, and xenophobia on our communities. Immigrants have become the specific targets of law enforcement and public scapegoating in the name of national security. Law enforcement uses immigration procedure as a criminal punishment, targeting immigrant communities in the name of anti-terrorism, denying the most basic of civil and human rights protections to non-citizens. Legislation passed hastily with little to no public dialogue, scrutiny, and participation continues to have disastrous effects for our communities, targeting immigrant workers, students, and families.

The use of military tribunals and secret evidence, the conditions under which over 1200 individuals have been detained and the additional "voluntary" questioning of over 5,000 individuals of Middle Eastern descent violates the most basic due process and equal protection rights. Hate violence and racial profiling against immigrant communities, including people of Middle Eastern and South Asian descent, Latinos

66720.259

and others who are alleged to be Arab, have resulted in fear, serious injuries, violence and even the death of at least three individuals. Increased militarization along the U.S.-Mexico border has exacerbated harassment, abuse, and racial discrimination in the region. Intensified employer discrimination, combined with an economic downturn for the service economy, has forced our communities into economic hardship. In the midst of humanitarian crises around the world, refugees to the United States and other wealthy nations now face increased barriers to their entry. We also emphasize the U.S. government's accountability for the displacement and the creation of new migrant and refugee communities through its military actions in Afghanistan.

The U.S. must fulfill its commitment to uphold the human rights of all members of our country and globe. Security for all means ending the policies, laws, and practices of racial profiling and illegal detentions targeting immigrants, especially people of or alleged to be of Middle Eastern descent. We urge for the safety and protection of all communities to live free of fear, racism, and xenophobia.

In light of new legislative and executive policies, we call upon the U.S. government to:

- **End the secrecy of the identity and location of those held in "anti-terror" sweeps, and stop the racial profiling and the illegal detentions of Arabs, Muslims, and other people of Middle Eastern and South Asian descent.**

- **Respect the due process and equal protection rights of all non-citizens and immigrants in detention, and refrain from holding individuals in indefinite detention.**

- **Uphold the civil liberties and human rights of all individuals, regardless of their immigration status, nationality, ethnicity, religion, political beliefs, gender, social class, or color of their skin.**

- **Recognize the contribution of immigrant workers, students, and families, and end discriminatory policies passed on the basis of legal status in the wake of September 11.**

- **Guarantee and provide relief to the loved ones of the victims and those unemployed in the World Trade Center attacks, regardless of immigration status, without intimidation or threat of deportation.**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00296 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.280

- **End harassment of immigrant communities fueled by the collaboration between local law enforcement and INS, FBI, and CIA in border and non-border areas.**

- **Enact strong federal and state hate crime laws as a public policy statement that does not tolerate discrimination based on race, religion, ethnicity, national origin, gender, sexual orientation, disability, migration or citizenship status.**

- **Enact a broad legalization program to help ensure civil liberties and other fundamental protections for all immigrants.**

- **Reaffirm the commitment to and comply with the 1951 United Nations Convention on the Protection of Refugees.**

- **Ratify the International Convention for the Protection of the Rights of All Migrants and Members of Their Families and adopt the Plan of Action from the 2001 UN World Conference Against Racism, Xenophobia, and Related Intolerance. The Convention, adopted on December 18, 1990, establishes a comprehensive framework to uphold the rights of migrants. The Plan of Action includes over 45 paragraphs specifically addressing the rights of migrants, refugees, asylum-seekers, and internally displaced persons.**

a. **Do you agree that "law enforcement uses immigration procedure as a criminal punishment" and "to deny the most basic of civil and human rights protections to non-citizens"?**

Response: No.

b. **Do you agree that the United States government engages or has engaged in "racial profiling and the illegal detention of Arabs, Muslims and other people of Middle Eastern and South Asian descent" during the War on Terror?**

Response: No.

c. **The statement called for the U.S. Government to "uphold the civil liberties and human rights of all individuals, regardless of their immigration status, nationality, ethnicity, religion, political beliefs, gender, social class, or color of their skin." What civil liberties and human rights do you believe are not upheld by the U.S. Immigration laws and the agencies that enforce them?**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00297 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.261

Response: I believe that current U.S. Immigration laws uphold civil liberties and human rights of individuals and that the federal agencies enforce those basic rights.

2. **In an August 1, 2006 letter you sent to Senators Specter and Leahy regarding the nomination of Michael B. Wallace to the Fifth Circuit Court of Appeals on behalf of the Magnolia Bar Association, of which you were then President-Elect, you said that "Wallace's views on the Voting Rights Act clearly are at odds with those of the forward-thinking advocates and members of the judiciary who paved the way for enormous progress Mississippi has made since 1965."**

   a. **Do you still agree with that statement?**

      Response: Yes.

   b. **Was it your contention that Mr. Wallace's views of the Voting Rights Act were, on the whole legally inaccurate, or were you simply arguing that his views of the law would yield what you considered to be sub-optimal results?**

      Response: It was the contention of the Magnolia Bar Association that Mr. Wallace's views on the Voting Rights Act were legally inaccurate and were not supported by the text of the statute.

   c. **Do you believe it is proper for members of the judiciary to be 'forward thinking,' or should they merely focus on the meaning of legal texts under the established rules of interpretation and construction?**

      Response: The judiciary should focus on the meaning of the legal texts under the established rules of interpretation and construction together with the law and facts before them and be guided by the applicable precedent in their circuit and the precedent of the United States Supreme Court.

3. **In a news article discussing voter-fraud precautions in the Presidential election of 2008, you were quoted as saying "we know there will be unprecedented steps to suppress the vote. I've been involved in elections in Mississippi in over 30 years and I do know the issues may change, but the methods and the methods to suppress the vote also change, but were [sic] ready." David Kenney, *Various Agencies Poised for Possible Election Problems*, WLBT3, Oct. 20, 2008, http://www.wlbt.com/Global/story.asp?S=9275104. What evidence was there that there would be "unprecedented steps to suppress the vote" in the 2008 Presidential Election?**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00298 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.262

Response: Organizations with whom I had been working on voter protection initiatives had received a variety of complaints leading up to the election including: individuals had not received curb-side assistance during the relevant absentee voting period as authorized under the laws; voters were receiving calls questioning their ability to vote because they had voted in the primary election; voters were receiving calls questioning their criminal history and challenging their right to vote based on their criminal history even though the criminal history was not for crimes for which they could be disenfranchised.

4. **Your May 30, 2007 letter to Senator Leahy regarding the nomination of Leslie Southwick to the Fifth Circuit, you stressed that Firth Circuit nominees should have a "sensitivity to the need to enforce fully the Civil Rights laws." I agree with you that federal judges should understand the need to fully enforce all federal laws.**

   a. **Do you agree that the Voting Rights Act is a civil rights law?**

      Response: Yes.

   b. **Do you agree that officials at the Department of Justice should have "sensitivity to the need to enforce fully the Civil Rights laws?"**

      Response: Yes.

   c. **Following the Presidential election in November of 2008, video footage surfaced showing members of the New Black Panther Party, at least one of whom was wielding a knight stick, intimidating voters outside a polling place in Philadelphia. On Tuesday, July 6, 2010, J. Christian Adams, the lead attorney who prosecuted the individuals in the video, testified before the U.S. Civil Rights Commission. Mr. Adams testified that Associate Attorney General Thomas Perrelli overruled the unanimous recommendation of six career Department of Justice attorneys that the prosecutions continue. Assistant Attorney General Thomas Perez has testified that the facts and law did not support the case, but Mr. Adams' testimony revealed that career attorneys "made it very clear [to Mr. Perez] that continuing to say that the facts and the law don't support this case would not be consistent with the truth." Adams also testified that Deputy Assistant Attorney General Fernandes instructed Civil Rights Division attorneys to not pursue voter intimidation cases involving black defendants and white victims. Assuming Mr. Adams' testimony was accurate, do you think these actions show a "sensitivity to the need to enforce fully the Civil Rights laws?"**

      Response: I am not familiar with the case and would be hesitant to offer an opinion without all the facts and law before me.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00299 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.263

5. **On the swearing in of Jim Kitchens after Governor Haley Barbour appointed him to the Mississippi Supreme Court, Judge Kitchens apparently became emotional. You apparently commented on that fact to the press, saying that "I agree. . . . that we have a new judge who has a heart." Adam Lynch, *First Black Judge Sworn In Under Barbour*, JACKSON FREE PRESS, Oct. 20, 2009.**

a. What did you mean by that statement?

Response: I believe the statement and article about which you are referring concerns the swearing-in of Malcolm Harrison as Hinds County Circuit Court Judge. Supreme Court Justice Jim Kitchens was not appointed by Governor Haley Barbour. Judge Malcolm Harrison was the first African-American appointed to a judicial vacancy in nearly six years. During his swearing-in Judge Harrison, apparently in reflecting on the significance of his achievement and the advocacy of the Magnolia Bar, cried. The quote attributed to me referred to Mr. Harrison showing that raw emotion.

b. On July 17, 2007, President Obama made the following comment:

> **"You look at the case law, and most of the time the law is pretty clear -- 95% of the time. Justice Ginsburg, Justice Thomas, Justice Scalia – they're all gonna agree on the outcome. But it's those 5% of the cases that really count. And in those 5% of the cases what you got to look at it is: What is in the justice's heart? What's their broader vision of what America should be? You know, Justice Roberts said he saw himself just as an umpire. But the issues that come before the court are not sport. They're life and death. And we need somebody who's got . . . the empathy to recognize what it's like to be a young, teenaged mom; the empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."**

Considering your statement concerning Judge Kitchens, do you believe it is important that a judge have "the empathy to recognize what it's like to be a young, teenaged mom" or "the empathy to understand what it's like to be poor, or African American, or gay, or old?"

Response: I believe it is important for the judge to make sure that every person who participates in the judicial system is treated with respect and dignity. Judges must understand that their decisions impact persons. A judge in deciding cases, however, should always be bound by the facts and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00300 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.264

the controlling law and render decisions consistent with the facts and the law.

6. **In a news release from the NAACP Legal Defense and Education Fund on May 27, 2008, you discussed the results of a study on juvenile offenders being given sentences of life imprisonment without the possibility of parole in Mississippi. You commented that "[p]rosecutors, law enforcement officials, lawyers, lawmakers and concerned citizens alike must pause and ask themselves how and why blacks can represent 80% of the kids sentenced to life without parole in a state whose total population is less than 40% African-American."**

   a. **Do you contend that juries and judges in Mississippi give harsher sentences to African-American offenders than they do to offenders of other races?**

      Response: In Mississippi, judges determine what sentence should be imposed. In certain circumstances, they have no discretion as they must impose mandatory sentences enacted by the state legislature. In all cases, however, there are discretionary decisions made by law enforcement authorities in the investigation and prosecution of crimes, and judges sometimes make discretionary calls throughout the criminal process. The legislature even engages in discretionary calls when enacting the legislation. The above quote refers to what I believed is Mississippi's obligation to figure out why African-American children are sentenced to life without the possibility of parole at a rate much higher than white children who may be eligible for such a sentence.

   b. **Is it your contention that the statistics cited above show there is racial discrimination in criminal sentencing?**

      Response: No. I was wondering whether reasons should be sought for this statistical disparity.

7. **Please describe with particularity the process by which these questions were answered.**

   Response: After the Department of Justice forwarded the questions to me, I reviewed them, conducted research, and prepared draft responses. I had discussions with the Department of Justice. I then conducted additional research before finalizing my responses.

8. **Do these answers reflect your true and personal views?**

   Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00301 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.265

SUBMISSIONS FOR THE RECORD

Statement of Senator Daniel K. Akaka
Hearing on the Nomination of Leslie E. Kobayashi
to be a U.S. District Court Judge for the District of Hawaii
Senate Judiciary Committee
July 15, 2010

It is my honor to speak in support of Federal Magistrate Judge Leslie E. Kobayashi, who has been nominated to serve as a U.S. District Court Judge for the District of Hawaii. I believe she will do an excellent job upholding our nation's laws and serve as a fine example in our justice system.

Judge Kobayashi has served as a Magistrate Judge in Hawaii since 1999. She was reappointed to a second term in 2007. Judge Kobayashi also has extensive experience in varied areas of law. She worked in private practice as an Associate at Fujiyama, Duffy, & Fujiyama, where she later became a Partner. Her experience in private practice focused on personal injury, product liability, professional liability, and complex and commercial litigation. Kobayashi has also worked for the City and County of Honolulu as a Deputy Prosecuting Attorney. Her work included research and writing for the appellate division, as well as prosecuting traffic, misdemeanor, and felony cases. Kobayashi has also served as an Adjunct Professor at the William S. Richardson School of Law at the University of Hawaii. Her extensive experience in litigation made her the perfect candidate to teach Pre-Trial Litigation classes to budding young lawyers.

Her educational background is equally varied and impressive. She attended the University of Hawaii for a few years and transferred to Wellesley College, where she earned her bachelor's degree. She also attended the William S. Richardson School of Law in Hawaii, as well as the Boston College School of Law, earning her Juris Doctorate degree from the latter. Her experiences in various school and employment settings only add to her unique history and qualifications for this position.

Judge Kobayashi is highly respected by her peers. She was awarded the Outstanding Volunteer Award by the Hawaii State Bar Association in 1999. In 2001, she won the Outstanding Adjunct Professor Award at the William S. Richardson School of Law. Her community involvement has included serving as a secretary and board member on the Hahaione School Parent Teacher and Student Association, board member of Volunteer Legal Services of Hawaii, and board member of the Friends of Judicial History Center.

I had the opportunity to interview Judge Kobayashi. I believe she is an outstanding and well-respected jurist, and is known for her fairness and timely rulings. Her experience as a Magistrate Judge will ensure a smooth transition and I have no doubt that she will meet the challenges of this new position with the same dedication and commitment that she has displayed throughout her career. I wholeheartedly support her nomination to the U.S. District Court and extend to her my aloha. Thank you, Mr. Chairman, for the opportunity to share with the committee my strong support for Judge Kobayashi.

P.O. Box A3782 Chicago, IL 60690 tel (312) 554-2044 fax (312) 554-9843
www.aabachicago.com
aabachicago@yahoo.com

May 10, 2009

VIA FACSIMILE and U.S. MAIL

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

A Not for Profit Corporation

President
Sharon A. Hwang

1st Vice President
Diana Lin

2nd Vice President
Mehpara Suleman

Secretary
Marla Kanemitsu

Treasurer
Anshuman Vaidya

Board of Directors
Sarah A. Poulimas
Marion Cruz
Sang-yul Lee
Junko Minami
Sangeeta Relan
Shital Thakkar
Jacqueline Vidmar

Honorary Directors
Michael P. Chu
Prabha Parameswaran
Sailesh Patel
Jean M. Pechette
Hon. Jesse G. Reyes
Nancy Sasamoto

Re: Letter of Support for Edmond E. Chang, Nominee for the United States District Court for the Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Asian American Bar Association of the Greater Chicago Area ("AABA"), we strongly urge the prompt confirmation of Edmond E. Chang for the United States District Court for the Northern District of Illinois. Mr. Chang is a well-respected member of the local Asian Pacific American legal community, and he is exceedingly well-qualified to serve on the federal bench. His historic nomination is a great source of pride for AABA and for our community.

AABA is the largest organization representing the interests of Asian Pacific American attorneys, judges, law professors, and law students in the Midwest. We are deeply committed to supporting the appointment of qualified Asian Pacific Americans to the judiciary, where Asian Pacific Americans are significantly underrepresented. Nowhere is the underrepresentation of Asian Pacific Americans more apparent than in the federal judiciary.

Asian Pacific Americans constitute almost 10% of the population of the Northern District of Illinois. Nevertheless, if confirmed, Mr. Chang would be the first Asian Pacific American Article III judge in the Northern District of Illinois or, indeed, any of the courts encompassed by the United States Court of Appeals for the Seventh Circuit. This includes the Midwest states of Illinois, Wisconsin, and Indiana. In addition, if confirmed, Mr. Chang would become only the second Asian Pacific American Article III judge outside of the East and West Coasts. As such, Mr. Chang's confirmation is of historical importance to the Asian Pacific American community, and would be an important step towards improving the diversity in the federal judiciary.

Mr. Chang's distinguished record of professional accomplishments has prepared him well to serve as a federal district judge. First, after serving on the *Northwestern University Law Review* and graduating with honors, he gained experience with the federal judiciary as a law clerk to Hon. James L. Ryan of the United States Court of Appeals for the Sixth Circuit, and Hon. Marvin E. Aspen of the United States District Court for the Northern District of Illinois. In the Fall of 1996, while clerking for Judge Aspen, Mr. Chang began teaching Civil Rights Litigation at Northwestern University School of Law. He has continued to teach that class for over a decade. AABA appreciates the importance of training law students to practice an area of law that represents the means by which ordinary citizens pursue their constitutional rights.

Following his judicial clerkships, Mr. Chang joined the international law firm of Sidley & Austin, where he practiced employment and labor law, including representing clients in federal court. There, Mr. Chang not only practiced in a subject matter that comprises a significant portion of the federal civil docket, he also represented clients in *pro bono* matters. Afterwards, Mr. Chang joined the U.S. Attorney's Office as a federal prosecutor, where he has served the community for over 10 years. In that time, he prosecuted a wide variety of federal crimes, including charges related to drugs, guns, child exploitation, fraud, tax evasion and extortion. After being promoted to Deputy Chief of the General Crimes section, Mr. Chang investigated and obtained charges and convictions against over 150 defendants. Mr. Chang ultimately was named as the Chief of Appeals, which is his current role, where he has supervised over 300 appeals in the Seventh Circuit and has continued to provide assistance in important prosecutions, including successful motions in the recent investigation and prosecution of former Illinois Governor Rod Blagojevich. Mr. Chang has received numerous awards and recognitions for his work, including the Star of Distinction, Chicago Crime Commission, Task Force Investigations and Prosecution Award; and a Certificate of Appreciation for Outstanding Contributing in the Field of Drug Law Enforcement.

Mr. Chang also has a long record of service to the legal community, particularly in promoting the Asian-Pacific American bar. He has spoken to Asian-Pacific American law student organizations on numerous occasions about the importance of public service and the need for Asian-Pacific American lawyers to break stereotypes in the legal profession. In an effort to assist the development of fair

66720.288

criminal justice systems in Asian nations, Mr. Chang has also presented his perspectives on the American legal system with visiting judges from China and Thailand.

Mr. Chang has been a contributing member to AABA for almost 14 years. This past year, Mr. Chang, together with three other current or former Assistant U.S. Attorneys, presented a Continuing Legal Education program to AABA members to provide them with information regarding developments and opportunities at the U.S. Attorney's Office. He has also assisted AABA in organizing its half-day Continuing Legal Education program on Litigation Practice and has generously participated in AABA mentoring programs. Mr. Chang was instrumental in drafting the initial judicial evaluation standards used by AABA and other organizations in connection with the evaluation of judicial candidates by the Alliance of Bar Associations. Judicial evaluations continue to play an integral part of AABA's role in serving the legal community over the past decade.

Based on his impeccable qualifications, professional achievements, and commitment to public service, Mr. Chang would be a wonderful addition to the federal judiciary. Accordingly, AABA proudly endorses and urges the speedy confirmation of Edmond E. Chang for the United States District Court for the Northern District of Illinois.

Very truly yours,

Sharon A. Hwang
President
Asian American Bar Association
of the Greater Chicago Area

ADVANCING EQUALITY

July 13, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for Leslie E. Kobayashi, Nominee for the United States District Court for the District of Hawaii, and Edmond E. Chang, Nominee for the United States District Court for the Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

The Asian American Justice Center ("AAJC") is dedicated to the advancement of human and civil rights for Asian Americans through advocacy, public policy, public education, and litigation. AAJC is a national leader on issues of particular importance to the Asian American community including: affirmative action, anti-Asian violence prevention and race relations, census, immigrant rights, immigration, language access, and voting rights. AAJC carries out its mission by operating closely with its three affiliates: the Asian Pacific American Legal Center, the Asian Law Caucus, and the Asian American Institute. The organization also has a network of nearly 100 community-based organizations in 25 states and the District of Columbia. AAJC recognizes a critical need for greater participation by Asian Pacific Americans in the federal courts. Out of approximately 875 federal Article III judges, only ten are Asian Pacific Americans. This alarming underrepresentation of Asian Pacific Americans in the federal judicial system deprives our courts of unique perspectives that are essential to resolving the complex issues before our courts today.

AAJC urges the timely confirmation of Judge Leslie E. Kobayashi for the United States District Court for the District of Hawaii and of Mr. Edmond E. Chang for the United States District Court for the Northern District of Illinois. Both candidates have the necessary experience, integrity, intellect, and judgment that will make them outstanding U.S. District Court judges.

Judge Leslie E. Kobayashi is a proven federal judge for over 10 years to the court to which she has been nominated an. As a federal magistrate judge she handles an extensive civil and criminal docket, which averages over 40 matters per week. In her career, she has handled nearly 100 trials, including over 25 jury

1140 Connecticut Ave. NW, Suite 1200, Washington, D.C. 20036 • T 202.296.2300 • F 202.296.2318 • www.advancingequality.org

AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

trials to verdict. The fact that Judge Kobayashi's reversal rate is less than one percent is testimony to her skill and capability as a jurist. Before being appointed to the bench, Judge Kobayashi had extensive experience as a Deputy Prosecution Attorney for the city and county of Honolulu, as a partner with a private law firm and as adjunct professor at the William S. Richardson School of Law at the University of Hawaii. A graduate of Boston College School of Law and Wellesley College, Judge Kobayashi's confirmation would elevate a qualified, respected jurist to the federal bench.

Judge Kobayashi's background is a uniquely American success story. Judge Kobayashi's maternal great-grandparents immigrated to Hawaii to work in the sugar plantations there. Her paternal grandparents also immigrated to Honolulu, where grandfather worked as a night watchman and her grandmother operated a Japanese noodle stand. Judge Kobayashi's father was the first member of his family to attend school in the United States, as well as the first to graduate from college. Born at Fort Dix, New Jersey, while her father was serving in the U.S. Army, Judge Kobayashi was raised in Hawaii. Judge Kobayashi's nomination is historic for the Asian Pacific American community in several respects: if confirmed, Judge Kobayashi would be the second female Asian Pacific American Article III judge in the District of Hawaii and only the fifth female Asian Pacific American Article III Judge ever. Judge Kobayashi is also involved in her community. She has served on the Board of Directors of Volunteer Legal Services of Hawaii and of the Friends of Judicial History Center. In addition, she is active in numerous other legal organizations, and is truly dedicated to public service.

Mr. Edmond E. Chang is an experienced federal litigator that has practiced extensively in the court to which he has been nominated. Mr. Chang is currently an Assistant U.S. Attorney for the Northern District of Illinois, a position he has held since 1999. As an Assistant U.S. Attorney, Mr. Chang has served in the General Crimes and Narcotics & Gangs Sections, where he tried 10 federal cases and prosecuted numerous crimes, and as Deputy Chief of the General Crimes Section. Most recently, Mr. Chang has served as Chief of Appeals for the Criminal Division, where he supervised over 300 appeals before the Seventh Circuit and personally handled over 30 of those appeals. Before joining the U.S. Attorneys Office, Mr. Chang was an associate at Sidley Austin LLP. Mr. Chang has also served as an adjunct professor at the Northwestern University School of Law, where he teaches a course on civil rights litigation. Mr. Chang received his J.D. *cum laude* from the Northwestern University School of Law, where he was a member of the Order of the Coif and an Articles Editor for the Northwestern University Law Review.

Mr. Chang's upbringing reflects the values and sensibilities of a working, middle-class family. Mr. Chang's parents emigrated from Taiwan to the United States in the 1960s to pursue master's degrees at Southern Illinois University in Carbondale. His parents later moved to New York City, where Mr. Chang was born. Mr. Chang worked part-time jobs in high school, college and law school to make ends meet, including working the late shift at a donut shop, and the stockroom of department store. Although Mr. Chang was an engineering major at University of Michigan, he found tremendous enjoyment in writing, literature, and philosophy. As a result, he decided to go to law school, whereupon he returned to Illinois – the state where his parents first lived when they came to America. Mr. Chang's nomination is historic for the Asian Pacific American Community: if confirmed, Mr. Chang would be the first Asian Pacific American Article III judge in any of the courts encompassed by the Seventh Circuit and only the second Asian Pacific American Article III judge outside of the East and West Coasts.

Asian Pacific Americans are woefully underrepresented on the federal bench. Indeed, while Asian Pacific Americans make up over 60 percent of the population in Hawaii, there has never been more than one Asian Pacific American federal district court judge serving in Hawaii at any given time. Further, since Asian Pacific

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00307 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.271

Americans constitute almost 10% of the population of the population of Chicago and Cook County, the nomination of an Asian Pacific American for that jurisdiction is highly appropriate. Confirming Judge Kobayashi and Mr. Chang will enrich our judicial system because of their exceptional qualifications and background, their commitment to professional excellence and community service, and their integrity and character. Accordingly, the Asian American Justice Center urges for the speedy confirmation of Judge Leslie E. Kobayashi for the United States District Court for the District of Hawaii and of Mr. Edmond E. Chang for the United States District Court for the Northern District of Illinois.

Sincerely,

Karen K. Narasaki
President and Executive Director

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00308 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.272

Senate Judiciary Committee
Statement on Denise Jefferson Casper
Nominee for the U.S. District Court for the District of Massachusetts
By Senator Scott Brown (R-MA)

Chairman Leahy, Ranking Member Sessions, members of the Judiciary Committee, thank you for the opportunity to appear today to introduce Denise Jefferson Casper of Massachusetts, a nominee for the U.S. District Court for the District of Massachusetts. I offer my congratulations to Ms. Casper and her family who are here to share this special day. I know that Ms. Casper has worked very hard to get to this point in her career, and I am honored to have the opportunity to introduce her.

I had the pleasure of speaking with Ms. Casper several weeks ago and very much enjoyed our conversation. Ms. Casper is a dedicated public servant who has served Massachusetts in many capacities. In a 2008 article in *Massachusetts Lawyer Weekly,* Ms. Casper was described as "absolutely tireless. More importantly, she has a profound drive to make the community a better place for all of us, but especially the most vulnerable of us." I understand that Ms. Casper is a courteous and humble woman, but is also a zealous and effective advocate.

In addition, Ms. Casper is an active community volunteer, having served in leadership roles with the Women's Bar Association, the Big Sister Association of Greater Boston, the American Bar Association, and many other noteworthy organizations. She has trained the next generation of advocates and judges as an instructor at Boston University's law school.

A graduate of Wesleyan and Harvard Law School, Ms. Casper currently serves as the Deputy District Attorney of the Middlesex District Attorney's Office. Ms. Casper oversees the critical work of the Victim Witness Bureau, the Cyber Protection Program, and the PACT unit, which investigates and prosecutes public corruption, organized crime and financial crimes.

Ms. Casper has substantial litigation experience in private legal practice and in government—including several federal trials and before the Massachusetts Superior Court and state district court. In 1999, she became an Assistant U.S. Attorney and handled all levels of proceedings in arson, bank robbery, fraud, firearms offenses and multiple-defendant drug trafficking and importation cases. Ms. Casper has also handled investigations, grand jury presentments and other pretrial matters involving wiretaps and several international extraditions. As Deputy Chief of the Organized Drug Enforcement Task Force, she oversaw other Assistant U.S. Attorneys and reviewed and approved charging documents, initiation of criminal investigations, plea agreements, and immunity orders.

In closing, I look forward to a thorough and fair examination of Ms. Casper's record. Thank you, Mr. Chairman and Mr. Ranking Member, for your leadership and the opportunity to be here today.

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Fax: 202.224.9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202.224.9102

Re: In Support of the Appointment of Hon. Leslie Kobayashi to U.S. District Court for the District of Hawai'i

Dear Senators Leahy and Sessions:

I have been an attorney in the State of Hawai'i since 1978. I am a past President of the Hawai'i State Bar Association and the Hawai'i Women Lawyers. I have served on our state Disciplinary Board and numerous other positions involving our state bar and judiciary. I practice in one of the largest law firms in Hawai'i and have both personal knowledge of Magistrate Judge Leslie Kobayashi and knowledge of her reputation of among many other practitioners in our state.

I have known Leslie for over 20 years, both in a professional and social capacity. I and others in my law firm have had cases before her, and we have also worked with her in her prior capacity in private civil law practice.

Leslie is extremely smart, ethical, competent, and proficient. She has excellent legal ability and experience. She has good legal reasoning and communicative skills. I believe that she is fair and compassionate and has always been able to see both sides (or more) of any given situation. She is a hard worker, and has not hesitated to dig into complex or complicated problems that require substantial work. She has an excellent temperament which is well suited to the position of judge. She is calm, dispassionate, well reasoned and even handed. She has excellent civil litigation experience both as an attorney and as a Magistrate Judge. She has been a quick study on new issues brought to her in the court. She works easily and effectively with others. Her demeanor both on the bench and off the bench is always marked with a strong sense of professionalism and fairness.

Leslie also has an excellent reputation in the legal community for honesty, integrity and legal proficiency. She is so well respected as a magistrate judge in our federal court here that many attorneys have opted to waive their right to a jury trial in order to have their case heard by her. She has been fair, respectful of

66720.273

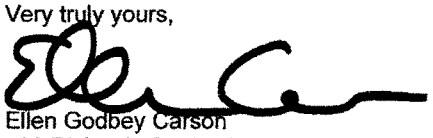
counsel and parties, and gives a wonderful image to our Judiciary. She has a successful settlement rate and is well respected for her capability to fairly assess issues and likely outcomes. She has aloso volunteered her time on numerous occasions to participate in programs to enhance the Judiciary, public education and access to justice. While there is always at least one losing party in every case, Leslie is remarkable in how many attorneys and parties are impressed with her, whether they win or lose in her court, for having given a fair consideration to the issues raised and done her best to rule in accordance with law.

I believe she is exceptionally qualified and would make an excellent District Court Judge.

Pursuant to policies of my law firm and our state bar association, I write this letter in my own behalf only, and not on behalf of any firm or association.

Thank you for your consideration. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Ellen Godbey Carson
700 Richards St. #2601
Honolulu, HI 96813
(808) 524-1800

cc: Hon. Leslie Kobayashi
David Louie, Esq.

743990

Perkins Coie

131 S. Dearborn Street, Suite 1700
Chicago, IL 60603-5559
PHONE: 312.324.8400
FAX: 312.324.9400
www.perkinscoie.com

Patrick M. Collins
PHONE: (312) 324-8558
EMAIL: PCollins@perkinscoie.com

June 7, 2010

SENT VIA FACSIMILE

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Fax: (202) 224-9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dikrsen Senate Office Building
Washington, D.C. 20510
Fax: (202) 224-9102

Re: Letter of Support for Edmond E. Chang, Nominee to US District Court, Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

I write this letter in support of Edmund Chang, who has been nominated for the position of United States District Judge for the Northern District of Illinois. Based on my experiences with Ed in the Chicago United States Attorney's Office ---where we overlapped for eight years---I respectfully submit that his keen intellect, exceedingly strong work ethic, even-keel demeanor and basic human decency will make him a first-rate jurist.

During our eight years together at the United States Attorney's Office, I had the majority of my substantive interactions with Ed when he was elevated by United States Attorney Patrick Fitzgerald in 2003 as the Chief of Appeals, one of the most significant supervisory positions in the office. Ed was a strong voice and hands-on administrator as Chief of Appeals. I worked most closely and directly with Ed over a six-month period during the appellate process following the Office's conviction of former Illinois Governor George Ryan. Ed was extremely supportive, directly engaged and contributed significantly to the final appellate product. Through the Ryan case experience and numerous others, I saw Ed as a very smart and unflappable attorney who faced pressure situations with quiet confidence and steadfast determination.

As I came to know Ed on the personal side, I was quite impressed with his strong work ethic. In our numerous email exchanges, it was quite common to get a response from Ed quickly, and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00312 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.276

often in the wee hours of the morning. Perhaps most significantly, I also saw his dedication to his wife and children. As a father with young children myself, I recall a number of conversations in which Ed discussed how he tried very hard to balance his challenging work schedule with his important family commitments.

Ed's background as a judicial clerk (both at the district court and appellate levels), private practice and public sector attorney, law professor and committed member of bar organizations demonstrates a breadth of experience that will allow Ed, if confirmed, to hit the ground running. Yet, as impressive as Ed's resume is, I firmly believe that he will contribute to the high-quality judicial tradition we have in our district due to his personal character. In short, Ed will execute justice thoughtfully and fairly.

I respectfully request that Ed Chang be confirmed. He will not disappoint.

Very truly yours,

Patrick M. Collins

91004-1118/LEGAL18439642.1

MEHEULAAND**DEVENS** LLP

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS*

707 Richards Street Penthouse One Honolulu, Hawaii 96813-4623 Telephone: (808) 528-5005 Fax: (808) 254-6872 PacificLaw.com

William Meheula* Vladimir P. Devens Derek T. Mayeshiro Kurt Kagawa

May 5, 2010

U.S. MAIL/ Fax: 202-224-9516; 202-224-9102

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: **The Honorable Magistrate Judge Leslie E. Kobayashi-Nomination to the United States District Court, District of Hawaii**

Dear Senators Leahy and Sessions:

I write this letter in strong support of President Obama's nomination of the Honorable Magistrate Leslie E. Kobayashi to the United States District Court for the District of Hawaii.

I am a partner with the law firm of Meheula & Devens, LLP, and serve as general outside counsel for the State of Hawaii Organization of Police Officers. I also serve as our Governor's nominee as a vice chairman on the Hawaii State Land Use Commission.

I have known Judge Kobayashi professionally for over 20 years and have appeared in her courtroom on various matters. Based on my work and appearances before her, there is no question that Judge Kobayashi has the legal intelligence, competency and work ethic to be an outstanding Federal judge. Her legal skills, experience and ability are at the highest levels and imminently qualify her for the nomination.

One of Judge Kobayashi's special qualities is her judicial temperament that is second to none and should be a model for other judges to follow. While a life time appointment could cause a person with the very best intentions to change, there is no question that what you see is what you get with Judge Kobayashi, which is a balanced, honest, compassionate and fair minded jurist who constantly strives to make the right decisions based on the law.

Judge Kobayashi has never forgotten her litigation roots where she worked in the trial trenches for many years prior to her appointment as a Magistrate. This is evident in the respect and professionalism she displays toward the attorneys who appear in her courtroom. In return, she enjoys the highest respect and admiration of our legal community.

As a Magistrate, she has been very effective in managing cases and has been able to settle some of the most difficult cases I have had to handle during my 22 year career. In addition, she has always shown a sense of humility that is both genuine and effective in dealing with the most difficult of clients.

Judge Kobayashi has earned the privilege to serve as our next District Court Judge and I hope she will receive your committee's favorable consideration.

Respectfully submitted,

Vladimir Devens

CHARLES K. DJOU
1ST DISTRICT, HAWAII

COMMITTEE ON ARMED SERVICES

COMMITTEE ON THE BUDGET

Congress of the United States
House of Representatives
Washington, DC 20515–1101

1502 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515 1101
(202) 225-2726

300 ALA MOANA BOULEVARD
ROOM 4-104
HONOLULU, HI 96850
(808) 541-2570

www.djou.house.gov

August 4, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, DC 20510

Re: Nomination of Leslie Kobayashi to the U.S. District Court – District of Hawaii

Dear Chairman Leahy and Ranking Member Sessions:

Please accept this letter in support of Magistrate Judge Leslie Kobayashi's nomination to the United States District Court for the District of Hawai'i. As a friend and colleague of Leslie's for more than 10 years, I know her to be an intelligent and passionate legal scholar and a tireless public servant.

In a legal career spanning 27 years, Leslie has worked as a prosecutor, civil litigator, and United States magistrate judge. While serving as a magistrate judge, Leslie has consistently displayed the ability to apply the law to the facts dispassionately and without bias toward or against any person or party. Moreover, Leslie understands that the Constitution is a permanent framework of principles. I believe that Leslie will respect the Constitution and longstanding judicial precedent and will not substitute her personal beliefs for the law.

Leslie also recognizes the need to give back to the community. In 1999, the Hawaii State Bar Association honored Leslie's commitment to pro bono work by presenting her with the *Outstanding Volunteer Award.* And in 2001, the University of Hawai'i, William S. Richardson School of Law, named Leslie an *Outstanding Adjunct Professor* for her pretrial litigation class.

Considering her unquestionable ability, long record of employment in public service and commitment to the community, I urge you to support Leslie Kobayashi's nomination to the United States District Court for the District of Hawai'i.

Aloha and Best Wishes,

CHARLES K. DJOU
Member of Congress

CC: Magistrate Judge Leslie Kobayashi

PRINTED ON RECYCLED PAPER

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00316 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.280

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

300 North LaSalle Street
Chicago, Illinois 60654

Mark Filip
To Call Writer Directly:
(312) 862-2192
mark.filip@kirkland.com

(312) 862-2000

www.kirkland.com

Facsimile:
(312) 862-2200

May 20, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I write this letter in support of Edmond Chang, who has been nominated for the position of United States District Judge for the Northern District of Illinois. Mr. Chang has served the people of the Northern District of Illinois with distinction since 1999 as an Assistant United States Attorney. He is an excellent attorney, and if confirmed, I expect he will be a first-rate federal judge.

I am most familiar with Mr. Chang through his work at the U.S. Attorney's Office in Chicago. There, he has been an accomplished federal prosecutor, rising to positions of increasing responsibility, including presently the position of Chief of Appeals. He has prosecuted a wide variety of cases, including white collar frauds, violent crimes, narcotics offenses, and child exploitation cases. He has strong experience in both the federal trial and appellate courts. Perhaps most important, he is widely respected as a level-headed, balanced, and fair person. All of those qualities will serve him well as a federal judge.

In sum, Mr. Chang has made great contributions to the Northern District of Illinois for over a decade as a federal prosecutor. I am confident he will make even greater contributions to the Northern District of Illinois if he is confirmed to be a federal district judge. I respectfully commend him to you.

Sincerely,

Mark Filip

Mark Filip

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00317 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.281

HAWAI'I Women LAWYERS

May 19, 2010

VIA FACSIMILE (202) 224-9516

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

VIA FACSIMILE: (202) 224-9102

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Leslie E. Kobayashi, Nominee to the U.S. District Court, District of Hawaii

Dear Senator Leahy and Senator Sessions:

Hawaii Women Lawyers (HWL) writes in strong support of President Obama's nomination of the Honorable Leslie E. Kobayashi to the U.S. District Court, District of Hawaii, to fill the vacancy created by the Honorable Helen Gillmor's ascension to senior status.

HWL is a nonprofit business organization, founded in Hawaii in 1976. Today HWL has about 300 female and male attorneys as members. The purposes of HWL, as set forth in our Articles of Incorporation, are to (1) improve the status of women in the legal profession; (2) increase the number of women attorneys in positions of authority and responsibility; and (3) promote the advancement of all women. Our mission is to improve the lives and careers of women and children in Hawaii. HWL supports qualified women nominees to positions on the bench, in connection with those purposes. Increasing opportunities for, and improving the visibility of, qualified women in the judiciary are important goals for HWL.

Judge Kobayashi, as a proven federal judge, has served as federal magistrate judge for the District of Hawaii for over ten years, and has over 15 years of experience as a practicing lawyer in Hawaii in civil and criminal law. She was originally appointed to serve as a federal magistrate judge in August 1999, and was reappointed to a second term in 2007. She oversees an extremely busy docket, and has overseen nearly 100 trials (including 25 jury trials to verdict). Her reversal rate is less than one percent. Judge Kobayashi is actively involved in the community and is a role model for young attorneys. HWL strongly supports Judge Kobayashi's nomination and respectfully urges you to confirm her for appointment to the U.S. District Court, District of Hawaii.

Very truly yours,

Joanne L. Grimes, President
Hawaii Women Lawyers

4820-5267-7894.1

P.O. Box 2072 • Honolulu, Hawai'i 96805

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00318 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.282

David H. Hoffman
1336 N. Hoyne Ave.
Chicago, IL 60622
dhhoffman@uchicago.edu

May 24, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202.224.9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202.224.9102

Re: Letter of Support for Edmond E. Chang, Nominee for the United States District Court for the Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

I am writing in support of Edmond Chang, a nominee for United States District Judge. I worked alongside Ed in the U.S. Attorney's Office in Chicago for six years, and I recommend him highly for a district judgeship.

I am a graduate of Yale and the University of Chicago Law School, and clerked for Chief Justice William Rehnquist and Judge Dennis Jacobs of the U.S. Court of Appeals for the Second Circuit. I served as an Assistant U.S. Attorney in Chicago from 1998 to 2005, was the Inspector General of Chicago from 2005 to 2009, and recently was a Democratic candidate for the United States Senate seat in Illinois, losing the February 2010 primary. This spring I have been teaching at the University of Chicago Law School as an adjunct professor.

When Ed joined the U.S. Attorney's Office in 1999, I had been in the office for one year. We worked together in the General Crimes Section, and later in the Narcotics and Gangs Section. I became a supervisor in that section and therefore saw more of Ed's work and was involved in supervisory meetings in which Ed's cases and work were discussed.

In an office of very talented attorneys, Ed clearly stood out as one of the most talented. He is an excellent legal writer — his writing is clear, logical, and compelling. There were other excellent

66720.283

writers in the office, but probably no one better than Ed.

His ability to develop and present complex legal cases was also excellent. His presentations of large and sometimes complicated fraud and international-drug-conspiracy cases to supervisors in the office and ultimately judges, and juries were strong and clear. Ed is very intelligent and articulate. I saw no one stronger in the U.S. Attorney's Office with regard to the ability to analyze and argue difficult legal issues.

Ed was an extremely hard worker, as well as a dedicated family man — two things that we know are difficult to combine. Because he regularly arrived at the office by 6:00 a.m., he managed to work 12 hour days at the office even though he was faithfully out of the office by 6:00 or 6:30 p.m. to catch his train home to spend time with his wife and children. And we could tell from his emails to us that he would also regularly put in more work late at night. When I asked Ed about his ultra-early arrivals, he said that he had become accustomed to getting up very early in high school when his bus from Queens to the Bronx Science high school picked up him every morning at 5:00 a.m. The bottom line is that he has a extremely strong work ethic that impressed everyone in a very hard-working office.

Ed's trait I admire most — and a trait I know will help make him an excellent judge — is his even keel. In an office of very animated trial lawyers, Ed's calmness stood out. Ed also seems to be, by nature, a very reasonable person. Part of what I saw in the office's confidence in Ed was the comfort that if Ed was recommending a particular argument or action, it was almost certain to be well thought-out and entirely sensible. U.S. Attorney Pat Fitzgerald's appointment of Ed as Chief of Appeals in 2005 — despite his relatively short tenure in the office — was a concrete statement about the office's high confidence in Ed.

I am sure Ed will quickly earn universal high marks from litigants who appear before him, because I know that he combines the intellectual ability, legal skill, character, and disposition necessary to be an excellent district judge.

If I can be of further assistance with regard to Ed's nomination, please do not hesitate to let me know.

Sincerely,

David H. Hoffman

Senate Judiciary Committee
Nomination Hearing for
The Honorable Magistrate Judge
Leslie E. Kobayashi to
The U.S. District Court,
District of Hawaii

4pm
July 15, 2010

Introduction by Senator Daniel K. Inouye

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00321 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.285

I would like to warmly welcome the Honorable Magistrate Judge Leslie E. Kobayashi and her family in the audience: her husband, Clarence Pacarro, and their two sons, Cody and Luke.

I am here to express my full support for Judge Kobayashi's nomination to the U.S. District Court, District of Hawaii. Judge Kobayashi's maternal great grandparents emigrated from Fukuoka, Japan, to work as contract laborers in Hawaii's sugar fields, and her paternal grandparents emigrated from Hiroshima, Japan, to work as a night watchman and to run a small family business.
Judge Kobayashi's father was the first in his family to attend college and dental school, and following his graduation, he served in the U.S. Army during the Korean War, and was posted at Fort Dix, New Jersey, where Judge Kobayashi was born. The family returned to Hawaii, where her father started a dental practice, and her mother worked as an elementary school teacher in Hawaii's public school system. Judge Kobayashi excelled in her studies, and attended Wellesley College and Boston College School of Law. Judge Kobayashi is an experienced lawyer with over twenty-five years of experience in Hawaii in both civil and criminal law. She has served as a federal magistrate judge for over ten years on the court to which she has been nominated.

Judge Kobayashi is admired and respected by her colleagues on the federal bench. She is well-versed in the legal processes as a sitting magistrate, and I am confident that she will be able to take the bench in a seamless and swift transition. Judge Kobayashi is also well-respected by both the plaintiff and defense bars. She is known for her fair and even-handed manner, her knowledge of the law, and her commitment to the principle that every person has their day in court.
Despite her busy schedule, Judge Kobayashi continues to be active in Bar Association activities and community service: she lectures at the William S. Richardson School of Law at the University of Hawaii; served on the Hawaii State

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00322 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.286

Bar Association's Board of Directors; and served as Vice Chair for the Magistrate Judges Executive Committee for the Ninth Circuit.

Her community involvement includes being on the Board of Directors for the Friends of Judicial History Center, and serving on the Board of Directors for the Volunteer Legal Services of Hawaii.

Judge Kobayashi's application was reviewed by a merit selection panel that Senator Akaka and I had established. She was deemed well-qualified for the position. Judge Kobayashi is the American dream, and, like so many others, hers is a story of hard work, perseverance, and success.

I am proud to support the nomination of Judge Leslie Kobayashi for United States District Judge, District of Hawaii. She is well-qualified for the position, and would bring honor to the court. I urge her swift confirmation.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00323 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.287

MICAH A. KANE

45-135 Moamahi Way
Kaneohe, HI 96744
micahkane@hawaii.rr.com
(808) 216-3000

JUN 25'10 am10:51

June 16, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Fax: 202.224.9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202.224.9102

The Honorable Senator Patrick J. Leahy,
The Honorable Senator Jeff Sessions
and Members of the Committee on the Judiciary:

It is with high regard that I submit this letter in strong support of Magistrate Judge Leslie Kobayashi as President Obama's nominee to the United States District Court for Hawaii.

I currently serve as a Trustee for both the Kamehameha Schools (Honolulu, HI) and Menlo College (Palo Alto, CA). Previously, from 2003 to 2009, I was a cabinet member for Governor Linda Lingle, State of Hawaii, as the Director of the Department of Hawaiian Home Lands. From 1999 to 2003, I served as the Executive Director and Chairman of the Hawaii Republican Party.

I have known Magistrate Kobayashi for nearly ten years, during which I have maintained respect for her professionally and a fondness for her personally. She is a model mother and wife and an outstanding community leader and working professional. I am honored to express my strong support for such a highly capable, intelligent and honest individual.

Magistrate Kobayashi's personal qualities most certainly carry over into her professional life. She consistently exhibits professionalism and a great deal of respect for all individuals. She has a contemplative and considerate nature, but also maintains the confidence to make the hard decisions demanded of her. While I'm sure there are many brilliant and qualified attorneys and judges in Hawaii meeting the legal acumen to serve on the federal bench, there are few that elevate to Magistrate Kobayashi's human acumen.

She is special because she sees people first and foremost as equals, regardless of where they come from, what their background is, or what their political preference may be.

These qualities form the basis of my relationship with Magistrate Kobayashi and are the primary reasons why I hold her in such high regard. Given my political background and her judicial status, one would ordinarily not expect that our families could maintain such a close and respectful relationship. However, throughout these past ten years, we have. During periods when I have had to take strong political stands, our friendship has not wavered. Political issues have never been a topic of discussion or debate, nor has she been judgmental of what I was doing or questioned why I was doing it. Our relationship has always been based on two families who enjoy each other's company, share similar values, and who care deeply about Hawaii, our Country, and the future for our children.

Over the years, I've observed Magistrate Kobayashi in challenging positions, both on a personal and professional level, and her ability to maintain her composure and successfully diffuse a situation or deliver her message has always amazed me. While these traits are often referred to as necessary in the judicial arena, I believe it is during the informal and personal moments that they are genuinely tested. She has always managed to pass that test and maintain her calm and level-headed demeanor.

Simply said, Magistrate Kobayashi is an honest, fair, intelligent and hard working individual who genuinely cares about people and pre-judges no one. I believe she would be an outstanding United States District Judge for Hawaii, and therefore lend my strong support for her nomination. I humbly ask for your favorable consideration.

Sincerely,

Micah A. Kane

KEITH M. KANESHIRO
ATTORNEY AT LAW

770 kapiolani boulevard suite 715
Honolulu, Hawaii 96813
Telephone (808) 864-1586 fax (808) 596-0055
EMAIL: keithmk@hawaii.rr.com

May 19, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Fax: 202-224-9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202-224-9102

RE: Nomination of Ms. Leslie Kobayashi for
United States District Court Judge (Hawaii)

Dear Senator Leahy and Senator Sessions:

This letter is submitted in support of the nomination of Magistrate Judge Leslie Kobayashi for the confirmation of United States District Court Judge for the District of Hawaii.

I was the elected Prosecuting Attorney for Honolulu from 1989-1996, elected to two consecutive 4-year terms. Prior to my election, I was a Deputy Prosecuting Attorney, a Deputy Attorney General, and the Executive Director of the Hawaii Crime Commission. After my two terms as the elected prosecutor, I served as the Director of the State of Hawaii Department of Public Safety. I am currently practicing law in the fields of civil law and criminal defense work. I also am licensed in Hawaii with a private investigation and private security licenses.

I have known Judge Kobayashi for over 30 years. As deputy prosecutors, we worked in the Honolulu office together. I was able to observe her excellent trial skills and her thorough and tireless work ethic in preparing her many complex criminal prosecutions.

Judge Kobayashi left the office to work for the prestigious civil law firm of Fujiyama, Duffy, & Fujiyama. Her legal skills in civil work quickly earned her the confidence of the senior partner, the late Wallace Fujiyama and she became the person that he relied on. Her trial skills, her legal reasoning, and her fairness in criminal and civil litigations earned her the respect of attorneys in both fields of practice.

As a result of her excellent work in the civil and criminal areas, she was selected as a federal magistrate in the District of Hawaii. I had the opportunity to appear before her in several federal criminal cases. As a magistrate, she was very fair in making legally sound decisions. She had a very calm legal temperament and a very keen understanding of the legal issues being litigated.

In addition to distinguishing herself as an excellent attorney and jurist in her professional life, she is a person of impeccable integrity, trustworthiness, and unquestionable moral character. She has balanced her hectic professional life by being a very loving and dependable mother and family person.

As the former Prosecuting Attorney for Honolulu and with over 20 years as a government attorney, I have seen many attorneys practicing in Hawaii. I would undoubtedly rate Judge Kobayashi as one of the top attorneys in Hawaii. She is imminently qualified and would be an excellent Judge for the District of Hawaii. I hope you will give her nomination favorable consideration. Thank you very much.

Sincerely,

Keith M. Kaneshiro

Keith M. Kaneshiro

66720.291

Statement of Senator Kerry

Thank you, Senator Durbin, for this opportunity to introduce Middlesex Deputy District Attorney Denise Jefferson Casper to the Judiciary Committee. I also want to thank Chairman Leahy for scheduling this hearing so quickly on Denise's nomination to be District Court Judge for Massachusetts. I also want to welcome Denise's mother, her husband Marc and her twin sons Harry and Jacob to today's hearing.

Denise will be a great judge and a worthy successor to the late Judge Reginald Lindsay, who passed away last year after a lengthy illness. He was an inspiration to us all, rising from a childhood in segregated Alabama to become only the second black man ever appointed to the federal bench in Massachusetts. Judge Lindsay loved the bench, so much so that just weeks before his death, he told a friend that he dreamed about returning to the bench every day.

Denise has that same kind of dedication – to public service as well to the administration of justice – so it shouldn't surprise anyone that Judge Lindsay was a great mentor to her. And it also shouldn't surprise anyone that Denise is a great mentor through her involvement with the Big Sisters program. Any time Big Sisters has a gala or some other kind of fundraiser, you can bet Denise is going to be the first to fill one of the tables.

Senator Kirk and I recommended Denise to President Obama for nomination after a rigorous examination of her record, and those of the many other qualified candidates, by a selection committee of legal community leaders in Massachusetts. Their conclusion was the same as mine – that Denise will prove to be a first rate jurist and an important addition to the District Court.

Everyone in the legal community raves about Denise's work ethic, her drive, her exceptional management, and, in fact, her brilliance. Kathy Weinman, a lawyer on the Council of the Boston Bar Association and a member of the selection committee, praised her "respectful leadership." Chief Judge Mark Wolf of the District Court, who she will serve under if confirmed has nothing but the best to say about her. "Denise Casper is a distinguished lawyer with a demonstrated commitment to serving the public interest. My colleagues and I particularly recall her fine service as a federal prosecutor. Ms. Casper's appointment would greatly contribute to our constant effort to give integrity to our nation's promise of Equal Justice Under Law."

I also kept hearing stories about Denise's legendary laugh. It is, I'm told, none too subtle. She is soft spoken, so much so that most people expect only a slight giggle from her when something funny happens. But in the Middlesex DA's office, her laugh can be heard everywhere. When she laughs, everybody on the whole floor knows she's there.

Denise graduated from Harvard Law School and is currently second in command in the Middlesex District Attorney's Office, one of the largest in the country. She also was a prosecutor in the U.S. Attorney's Office and for a time was the Deputy Chief of the Organized Crime Drug Enforcement Task Force. She also was a clerk for the Massachusetts Appeals Court, an attorney with the firm of Bingham McCutchen and a teacher at Boston University School of Law.

Middlesex District Attorney Gerry Leone, who is here, told me right away that Denise would be a star on the federal bench. I value Gerry's opinion immensely. But I also have some personal experience to draw on in assessing the job Denise has done in the Middlesex DA's Office. I was the First Assistant in the Middlesex District Attorney's Office from 1976 until 1981, and I know what it takes to run an organization of that size. Denise has what it takes – she handles everything, from arguing appeals to

trying murder cases to handling personnel matters and putting together budgets. She is the epitome of the "lawyer-manager." And besides, she used my old desk until Gerry retired it permanently.

Anybody who looks carefully at Denise's record – in the DA's office, in the U.S. attorney's office, in the Massachusetts Appeals Court and in academia – will recognize her talent, her dedication and her promise. I recommend that the Senate confirm her as quickly as possible.

Walter S. Kirimitsu
5111 Poola Street
Honolulu, HI 96821

June 16, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary United States Senate
SD-152 Dikrsen Senate Office Building
Washington, D.C. 20510

RE: RECOMMENDATION OF MS. LESLIE KOBAYASHI FOR POSITION OF JUDGE, U.S. DISTRICT COURT, HAWAII

Dear Honorable Patrick J. Leahy and Honorable Jeff Sessions:

This letter is submitted for your consideration with respect to the potential nomination of Ms. Leslie Kobayashi for the position of Judge, U.S. District Court, Hawaii.

I am an attorney in the State of Hawaii and have been since 1966. I have practiced here during the years 1966 through 1995 in the field of civil litigation and general civil practice. During the years 1995 through 1999, I served as an Associate Judge of the Intermediate Court of Appeals of the State of Hawaii. From 1999 through 2006, I served as the first University General Counsel and Vice President for Legal Affairs for the University of Hawaii system. From 2006 through the present, I have served as the first non-clergy President of Saint Louis School, a Marianist Catholic school with a history of 164 years in Hawaii.

I also have served as past President of the Hawaii State Bar Association (1990), and a member of the American Bar Association, American Board of Trial Advocates, and the American College of Trial Lawyers, a former board member of the Japan American National Museum, former board member and chairman of the Board of Trustees of Saint Louis School in Honolulu, Hawaii.

I have known Ms. Kobayashi for approximately twenty years. Although we were with different law firms, she and I worked on several litigation cases in the past. When she was appointed as U.S. District Court Magistrate, Hawaii, I appeared before her several times in civil litigation matters. Through my work and contact with Ms. Kobayashi, I have been able to assess her abilities. It is my view that she has outstanding legal skills, is intelligent, diligent and has excellent critical analytical skills. She is also very humane, compassionate and even-tempered.

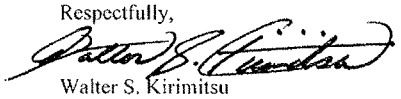
I firmly believe that Ms. Kobayashi would make an excellent judge and is worthy of appointment and confirmation as the next U.S. District Court Judge, Hawaii.

Ms. Kobayashi has an excellent judicial temperament, which is well suited to the position. She is calm, dispassionate, articulate, well reasoned and even handed.

She has an excellent reputation in the legal community for honesty, trustworthiness, character and integrity. I believe she is exceptionally qualified and would make an outstanding Judge of the U.S. District Court, Hawaii.

Thank you for your time and consideration. Should you have any questions, please contact me anytime.

Respectfully,



Walter S. Kirimitsu

Hawaiian Telcom

May 21, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Via Fax: (202) 224-9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary United States Senate
SD-152 Dikrsen Senate Office Building
Washington, D.C. 20510
Via Fax: (202) 224-9102

Re: Confirmation of Judge Leslie Kobayashi
For the United State District Court for the District of Hawaii

Dear Senators:

It is my pleasure to highly recommend Magistrate Judge Leslie Kobayashi for confirmation as a United States District Court Judge for the District of Hawaii.

I have known Judge Kobayashi for over twenty years. While in private practice, she developed a reputation as a good litigator with solid analytical and communication skills. She always presented concise, logical and well written pleadings. Her experience and training in litigation created a solid base for her career as a jurist.

Since she began sitting on the Federal bench, I appeared before her on numerous occasions. I always found her to be an excellent jurist. She has a keen intellect and is able to immediately identify and focus on key issues. She is articulate and asks pointed questions to clarify issues and positions. Her decisions are always well written and clearly express the reasons underlying her rulings. Her judicial demeanor is excellent as she treats all parties and attorneys with respect.

In addition to her judicial capabilities, she also has important leadership skills. It is my belief that her intellect, combined with her work ethic and pleasant personality will cause her to a leader and asset to the Federal Judiciary.

1177 Bishop Street • Honolulu • HI 96813

Please accept my highest recommendation for the confirmation of Judge Kobayashi for the District Court.

Sincerely,

John T. Komeiji
Sr. Vice President & General Counsel

SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

slassar@sidley.com
(312) 853 7668

BEIJING
BRUSSELS
CHICAGO
DALLAS
FRANKFURT
GENEVA
HONG KONG
LONDON
LOS ANGELES

NEW YORK
PALO ALTO
SAN FRANCISCO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

FOUNDED 1866

May 13, 2010

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for Edmond E. Chang, Nominee for the United States District Court for the Northern District of Illinois

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to strongly endorse and urge the confirmation of Edmond E. Chang for the United States District Court for the Northern District of Illinois.

I hired Mr. Chang in 1999 at the United States Attorney's Office in Chicago when I was serving as United States Attorney. I had previously served in that office over two terms totaling around 16 years. Not only did I supervise Mr. Chang as U.S. Attorney, but I also had the pleasure of trying a case with him. I am also familiar with Mr. Chang's reputation in that office since I left in 2001.

Mr. Chang has been an outstanding Assistant U.S. Attorney. He is an experienced and excellent trial lawyer, and now is the Chief of Appeals where he has served with distinction since 2005. Having clerked for a district court judge (Marvin E. Aspen) and a court of appeals judge (James L. Ryan), and served as both a trial lawyer and an appellate lawyer, Mr. Chang has an outstanding background to be a district court judge.

Most importantly, Mr. Chang has the personal attributes to be an excellent judge. In addition to being extremely bright, Mr. Chang has good common sense and is very humble.

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00334 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.298

SIDLEY AUSTIN LLP
SIDLEY

Common sense and humility cannot be taught and are very important to the success of a district court judge.

Mr. Chang's experience doing *pro bono* cases at Sidley Austin, his participation in local bar activities, and his service for 11 years in the U.S. Attorney's Office proves a commitment to public service.

Lastly, Mr. Chang has always worked extremely hard, whether putting himself through school with part time jobs or putting in long hours at the U.S. Attorney's Office. Mr. Chang would be an outstanding district court judge.

Very truly yours,

Scott R. Lassar

CH1 5314431v.1

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 15, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
July 15, 2010

Today we welcome to the Committee five of President Obama's well-qualified judicial nominees. Senator Kyl and Senator McCain support the nomination of Judge Mary Murguia of Arizona to the Ninth Circuit. Similarly, Carlton Reeves of Mississippi has the support of his Republican home state Senators, Senator Cochran and Senator Wicker. And Denise Jefferson Casper of Massachusetts has the support of Senator Kerry and Senator Brown. These nominations demonstrate again how President Obama continues to work with Senators from both sides of the aisle to identify qualified nominees to fill vacancies on the Federal bench.

I thank Senator Durbin for chairing this hearing. He and Senator Burris strongly support Edmond Chang, the nominee from Illinois who is appearing before the Committee today. I appreciate his willingness to preside over this important proceeding.

I trust that with the support of so many Members of this Committee and so many Republican Senators, all of these nominees will be treated fairly. I hope that in light of the vacancies on the Federal courts, we can proceed without delay to consider their nominations both in Committee and before the Senate. That should be the case for all nominees. Sadly, the Senate Republican leadership has insisted on months of delay before agreeing to vote on judicial nominations that are confirmed unanimously and refuses to consider many others. This serves no good purpose. This obstruction is wrong. I have called for it to end, but the Republican Senate leadership persists in their practice.

Early this week, the Senate finally confirmed Judge Sharon Coleman to a seat on the U.S. District Court for the Northern District of Illinois. Judge Coleman waited nearly three months before her nomination came to a vote because of obstruction by the Senate Republican leadership. When allowed to vote, Senators confirmed her unanimously. She should have been confirmed months ago, as should have the dozen other judicial nominees who were reported by the Judiciary Committee with no objection and yet remain stalled by Republican refusal to consent to final Senate action. In all there remain 21 judicial nominees already considered by this Committee and favorably reported that are being stalled from a final vote.

The Senate Republican leadership refuses to enter into time agreements on pending judicial nominations that have support from both Democrats and Republicans, including nominees with bipartisan support from North Carolina, Tennessee, South Carolina, California, New York, Delaware, Virginia, Utah, Maryland, Minnesota and Rhode Island. Democrats are prepared to vote on these nominations; the Republican leadership is not and continues to obstruct progress.

The Senate is dramatically behind the pace I set for President Bush's judicial nominees in 2001 and 2002. In 2002, the second year of the Bush administration, the Democratic Senate majority's hard work led to the confirmation of 72 Federal circuit and district judges nominated by a President from the other party. We are more than halfway through the second year of the Obama administration, and we have confirmed just 24 so far—72 to 24.

In the first two years of the Bush administration, we confirmed 100 Federal circuit and district court judges. So far in the first two years of the Obama administration, the Republican leadership has successfully obstructed all but 36 of his Federal circuit and district court nominees—100 to 36.

Federal judicial vacancies around the country continue to hover around 100. Of these, 42 vacancies have been declared by the Administrative Office of the U.S. Courts to be judicial emergencies. Nominees to fill more than 10 of these emergency vacancies remain stalled on the Senate Executive Calendar. Each vacancy represents an overburdened Federal court handicapped by Senate Republicans' refusal to act. Republican obstructionism and delay has real meaning for litigants in those jurisdictions—they are often forced to wait months or even years before their cases are heard. This is just wrong.

Last year, Senate Republicans refused to move forward on judicial nominees. The Senate confirmed the fewest judges in 50 years. The Senate Republican leadership allowed only 12 Federal circuit and district court nominees to be considered and confirmed despite the availability of many more for final action. They have continued their obstruction throughout this year. By every measure, the Republican obstruction is a disaster for the Federal courts and for the American people. We owe it to the American people to do better, and I hope we start with the judicial nominees before us today.

Judge Mary Murgia is nominated to serve on the Ninth Circuit. She has spent the last decade as a Federal district court judge in Arizona, where she has presided over thousands of civil and criminal cases. She is a former Federal and local prosecutor, and she was the first Latina to become a Federal judge in Arizona. Judge Murgia earned her undergraduate and her law degrees from the University of Kansas.

President Obama nominated Edmond Chang to sit on the U.S. District Court for the Northern District of Illinois. He has served as a Federal prosecutor in that district for more than a decade, and he is currently the Chief of Appeals for its Criminal Division. Previously, he practiced labor and employment litigation in the Chicago office of Sidley Austin. He earned his B.S., cum laude, from the University of Michigan and his J.D., cum laude and Order of the Coif, from Northwestern University School of Law. If confirmed, Mr. Chang will be the first Asian Pacific American to serve as a Federal judge in Illinois.

Judge Leslie Kobayashi is nominated to be a district court judge in Hawaii. She has served that district as a Federal magistrate judge since 1999, before which she was a lawyer in private practice and a local prosecutor. Judge Kobayashi earned her B.A. from Wellesley College and her J.D. from Boston College School of Law. If confirmed, she will become the second female Asian Pacific American Federal judge in the District of Hawaii.

The President nominated Denise Jefferson Casper to serve as a Federal judge in the District of Massachusetts. She is currently the Deputy District Attorney in Cambridge, Massachusetts, and she previously was a Federal prosecutor in the U.S. Attorney's Office in Boston, where she rose to become Deputy Chief of the Organized Crime Drug Enforcement Task Force Unit. She has also worked as a lawyer in private practice and as a legal writing instructor at Boston University School of Law. She received her B.A. from Wesleyan University and her J.D. from Harvard Law School.

Carlton Reeves is nominated to sit on the U.S. District Court for the Southern District of Mississippi. He is a partner in a Jackson, Mississippi law firm, and he also serves as a Family Master in a local court, as part of which he adjudicates cases related to paternity and child support. He previously was the Chief of the Civil Division in the U.S. Attorney's office in the Southern District of Mississippi. He earned his B.A., magna cum laude, from Jackson State University and his J.D. from the University of Virginia School of Law. If confirmed, Mr. Reeves will be second African American to serve as a district court judge in Mississippi.

I welcome the nominees and their families to the Committee today.
# # # # #

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

July 9, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Edmond E. Chang (N.D. Ill.) and Leslie E. Kobayashi (D. Haw.)

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we proudly endorse and urge the prompt confirmation of Edmond E. Chang for the U.S. District Court for the Northern District of Illinois and Judge Leslie E. Kobayashi for the U.S. District Court for the District of Hawaii. Both candidates have the experience, intellectual capacity, integrity, and judicial temperament to be excellent U.S. District Court judges. Mr. Chang is an experienced federal litigator who has practiced extensively before the court to which he has been nominated to serve. Judge Kobayashi is a proven federal judge who has served as a federal magistrate judge for over 10 years on the court to which she has been nominated to serve. Both candidates also would help in addressing the significant under-representation of Asian Pacific Americans in the federal judiciary.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 22nd year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, where Asian Pacific Americans are woefully underrepresented.

1612 K STREET, NW, SUITE 1400 • WASHINGTON, DC 20006
PHONE: (202) 775-9555 • FAX: (202) 775-9333 • WWW.NAPABA.ORG

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00339 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.303

Progress continues to be made with respect to Asian Pacific American representation on the federal judiciary, and NAPABA thanks the Judiciary Committee for being part of that progress. Most recently, Judge Lucy H. Koh was confirmed by the full Senate for a seat on the U.S. District Court for the Northern District of California. Two additional nominees await full Senate confirmation: Judge Edward M. Chen, nominee for the U.S. District Court for the Northern District of California, and Associate Dean and Professor of Law Goodwin H. Liu, nominee for the U.S. Court of Appeals for the Ninth Circuit. We ask for the assistance of Judiciary Committee members to ensure that both individuals receive Senate floor votes in the upcoming weeks.

Mr. Chang and Judge Kobayashi are both excellent candidates who are poised to contribute immediately to the federal district court benches for which they have been nominated to serve. Moreover, each nomination is historic. Their qualifications and importance to the community are presented below.

Edmond E. Chang (N.D. Ill.)

Edmond E. Chang has been an Assistant United States Attorney for the Northern District of Illinois for over 10 years. Since 2005, he has served as Chief of Appeals for the Criminal Division, where he has supervised over 300 appeals to the U.S. Court of Appeals for the Seventh Circuit and personally handled over 30 appeals. He also has worked in the Narcotics & Gang Section and the General Crimes Section of the U.S. Attorney's Office. In all, he has investigated and obtained charges and convictions against over 150 defendants, and tried over 10 federal cases. Although Mr. Chang primarily is now involved in appellate litigation for the U.S. Attorney's Office, he continues to provide assistance in important prosecutions. For example, he recently participated in successful motions practice in the investigation and prosecution of former Illinois Governor Rod Blagojevich. Mr. Chang has received a unanimous ABA rating of Qualified.

Mr. Chang has received significant bipartisan praise for his work. For example, Mark Filip – former Deputy Attorney General and former federal district court judge for the Northern District of Illinois, both times nominated by President George W. Bush – stated that Mr. Chang is "widely respected as a level-headed, balanced and fair person." Scott Lassar, the U.S. Attorney for the Northern District of Illinois nominated by President William J. Clinton, stated that Mr. Chang is an "outstanding Assistant U.S. Attorney." Notably, Mr. Lassar commented that: "In addition to being extremely, bright, Mr. Chang has good common sense and is very humble[, which are] very important to the success of a district court judge." A former Assistant U.S. Attorney who clerked for Chief Justice William H. Rehnquist and Judge Dennis Jacobs (George H.W. Bush appointee) of the Second Circuit stated that "[i]n an office of very talented attorneys, Ed clearly stood out as one of the most talented. . . . I saw no one stronger in the U.S. Attorney's Office with regard to the ability to analyze and argue difficult legal issues."

In addition to his experience as a federal prosecutor, Mr. Chang has taught as an adjunct professor at Northwestern University School of Law since 1996. Specifically, he has taught a three-credit course on federal civil rights litigation, covering the law of section 1983 and habeas corpus. Mr. Chang also was an associate with the complex civil litigation group

at Sidley & Austin in Chicago. Mr. Chang started his legal career with two prestigious clerkships: for Judge James L. Ryan on the U.S. Court of Appeals for the Sixth Circuit, and then Chief Judge Marvin E. Aspen for the U.S. District Court for the Northern District of Illinois. Mr. Chang graduated *cum laude* from Northwestern University School of Law, where he was Order of the Coif and an Articles Editor on the *Northwestern Law Review*. He received his undergraduate degree *cum laude* from the University of Michigan, where he majored in Aerospace Engineering.

Mr. Chang has been involved in the legal community in Chicago. While at Sidley & Austin, he represented numerous pro bono clients, including a habeas corpus petitioner in federal court. He also has served on the Board of Governors for the Chicago Council of Lawyers, the Federal Magistrate Judge Merit Selection Panel for the Northern District of Illinois, and the Judicial Evaluation Committee for the Asian American Bar Association of Chicago.

Mr. Chang's nomination is historic for the Asian Pacific American community. If confirmed, he would be the first Asian Pacific American Article III judge in any of the courts encompassed by the U.S. Court of Appeals for the Seventh Circuit. He also would become only the second Asian Pacific American Article III judge outside of the East and West Coasts. Moreover, given that Asian Pacific Americans constitute almost 10% of the population of Chicago/Cook County, the nomination of an Asian Pacific American for that jurisdiction is highly appropriate.

Mr. Chang's personal history reflects the values of a working, middle-class family. His parents emigrated from Taiwan to the United States in the 1960s to pursue master's degrees in Illinois. After earning their degrees, the couple moved to New York City and worked various jobs in order to make a better life for their American-born children. Mr. Chang was born in New York. Because of his parents' hard work and sacrifices, Mr. Chang was fortunate to attend the prestigious Bronx High School of Science. He worked part-time jobs in high school, college, and law school, to make ends meet. Those jobs included working the late shift at a donut shop and in the stockroom of a department store. Although Mr. Chang was an engineering major, he found tremendous enjoyment in writing, literature, and philosophy. As a result, he decided to go to law school, choosing Northwestern University School of Law in Illinois – the state where his parents first lived when they came to America. Now, Mr. Chang makes Illinois his home, having married his college sweetheart and raising two daughters who are almost 10 and almost 6 years old.

Leslie E. Kobayashi (D. Haw.)

Judge Leslie E. Kobayashi has been a federal magistrate judge in Hawaii for over 10 years, and is an experienced lawyer with over 25 years of experience in both civil and criminal law. Judge Kobayashi is in her second term as a federal magistrate judge, after a thorough review of her work and reappointment in the summer of 2007. During her time as a judge, Judge Kobayashi has handled nearly 100 trials, including over 25 jury trials to verdict. Judge Kobayashi also has issued almost 400 orders and handled hundreds of civil settlement conferences. She has had a reversal rate of less than one percent. Judge Kobayashi also is the lead judge in the District's re-entry pilot program, which seeks to increase the likelihood

that high-risk offenders will finish their post-sentence period of supervision in the community successfully and thereby reduce recidivism. Judge Kobayashi has received an ABA rating of Well Qualified by a substantial majority, and Qualified by a minority.

Judge Kobayashi also has the support of Hawaii leaders from both political parties. Notably, many of these people have known Judge Kobayashi for over 20 years. Micah A. Kane, a former Executive Director and Chairman of the Hawaii Republican Party, stated that Judge Kobayashi "is special because she sees people first and foremost as equals, regardless of where they come from, what their background is, or what their political preference may be." Vladimir P. Devens, Republican Governor Linda Lingle's nominee as Vice Chairman on the Hawaii State Land Use Commission, stated that "[o]ne of Judge Kobayashi's special qualities is her judicial temperament that is second to none and should be a model for other judges to follow." Mr. Devens further described Judge Kobayashi as "a balanced, honest, compassionate and fair minded jurist who constantly strives to make the right decisions based on the law." The Senior Vice President and General Counsel of Hawaii Telecom, John P. Komeji, also has written in support of Judge Kobayashi, stating that "I always found her to be an excellent jurist. She has a keen intellect and is able to immediately identify and focus on key issues." A past president of the Hawaii State Bar Association and Hawaii Women Lawyers summarized Judge Kobayashi's qualifications by stating that "[s]he has been fair, respectful of counsel and parties, and gives a wonderful image to our Judiciary. . . . While there is always at least one losing party in every case, [Judge Kobayashi] is remarkable in how many attorneys and parties are impressed with her, whether they win or lose in her court, for having given a fair consideration to the issues raised and done her best to rule in accordance with law."

Prior to her appointment as a federal magistrate judge, Judge Kobayashi had a career that involved government service, private practice, and academia. She served as Deputy Prosecuting Attorney for the City and County of Honolulu for two years, where she appeared in court daily and prosecuted 10 jury felony cases to verdict. Judge Kobayashi was in private practice for sixteen years at Fujiyama, Duffy & Fujiyama, where she served as managing partner for five years. Judge Kobayashi taught pretrial litigation and practice as an adjunct professor at University of Hawaii, William S. Richardson School of Law. In 2001, she received the Outstanding Adjunct Professor Award at the law school.

Judge Kobayashi has been active in the local community. She has served on the Board of Directors for the Hawaii State Bar Association, on the Board of Directors for the Volunteer Legal Services of Hawaii, and the Board of Directors for the Friends of Judicial History Center. In 1999, the Hawaii State Bar Association awarded Judge Kobayashi the Outstanding Volunteer Award.

Even though the Asian Pacific American population in Hawaii is over 60%, there has never been more than one Asian Pacific American federal district court judge serving in that jurisdiction at any given time. If confirmed, Judge Kobayashi would become only the second Asian Pacific American female Article III judge in the District of Hawaii and only the fifth ever nationwide.

Judge Kobayashi's background is reflective of the history of Hawaii. Judge Kobayashi's maternal great-grandparents emigrated from Fukuoka, Japan, to Hawaii in 1904 as contract laborers to work at the Kahuku Sugar Plantation. Her paternal grandparents emigrated from Hiroshima, Japan, to Honolulu where her grandfather was a night watchman and her grandmother operated a *saimin* (Japanese noodle) stand. Judge Kobayashi's father was the first person in his family of seven children to graduate from college and graduate school, and the only one ever to attend school in the continental United States. Following graduation from dental school, Judge Kobayashi's father served in the U.S. Army during the Korean War and was posted at Fort Dix, New Jersey, where Judge Kobayashi was born. Shortly after her first year, Judge Kobayashis's family returned to Honolulu, where her father eventually started his dental practice and her mother taught at a public elementary school. A life-long resident of Hawaii, Judge Kobayashi is married to a state court judge in Hawaii, and they have two children, ages 10 and 6.

Based on their qualifications, intellect, integrity, and commitment to justice, NAPABA extends an enthusiastic endorsement to Mr. Edmond E. Chang to serve as a District Judge for the United States District Court for the Northern District of Illinois, and to The Honorable Leslie E. Kobayashi to serve as a District Judge for the District of Hawaii. Both individuals would be able to make an immediate positive contribution to their respective courts. NAPABA urges that the Senate act quickly to confirm both individuals.

Sincerely,

Joseph J. Centeno
President

Tina R. Matsuoka
Executive Director

John C. Yang
Co-Chair, Judiciary Committee

Wendy Wen Yun Chang
Co-Chair, Judiciary Committee

PRICE
OKAMOTO
HIMENO
& LUM

Attorneys at Law
A Law Corporation

Ocean View Center
707 Richards Street, Suite 728
Honolulu, Hawaii 96813
Telephone: (808) 538-1113
Fax: (808) 533-0549

Warren Price III
Kenneth T. Okamoto
Sharon R. Himeno
Bettina W. J. Lum
Terence S. Yamamoto
Robert M. Kohn

Of Counsel

Robert A. Marks
Rick J. Eichor

April 27, 2010

Via Facsimile (202) 224-9516
The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Buiulding
Washington, D.C. 20510-6275

Dear Senator Leahy:

I write in support of the appointment of Magistrate Judge Leslie Kobayashi to the U.S. District Court in Hawaii.

I have been a trial lawyer in Hawaii since 1972. I am a Fellow in the American College of Trial Lawyers and was the Attorney General for the State of Hawaii between 1986-1992. I have appeared before scores of trial and appellate judges in every level of our state court system, as well as the U.S. District Court, and the U.S. Supreme Court. I can state without any reservation that Magistrate Judge Kobayashi is eminently qualified to serve as a U.S. District Court judge, and urge her swift confirmation.

I have known Magistrate Judge Kobayashi since she first began practicing law in 1983. She worked for a prominent trial law firm and soon earned an excellent reputation for being well prepared and highly competent.

Over the years her reputation as a trial lawyer grew and we had a number of cases between our law firms. I found her to be extremely intelligent and remarkably skillful. Moreover, she was always reasonable and fair-minded.

The trial bar in Hawaii was elated when she was appointed to be a Magistrate Judge. Since her appointment I have been involved in numerous cases before her. She is always in complete control of the courtroom and her demeanor is pleasant, polite, but firm.

My law firm recently handled a very complex case in U.S. District Court involving dozens of experienced trial lawyers and over one hundred motions. As expected, the litigation at times became contentious and heated. Magistrate Judge Kobayashi handled the case with exemplary judicial temperament and insight. At the hearings she asked thoughtful questions, maintained control over the courtroom, and always demonstrated respect for the litigants and judicial process. Her preparation and keen analysis were clearly reflected in her well-reasoned written decisions. Whether we won or lost the motion, we were eminently satisfied that Magistrate Judge Kobayashi had carefully read and considered every pertinent fact and point of law.

I am confident that Magistrate Judge Kobayashi will be an outstanding U.S. District Court judge, and my support for her is unequivocal and absolute. I will be happy to answer any questions you or your committee members might have.

Very truly yours,

PRICE OKAMOTO HIMENO & LUM

Warren Price, III

WP:csa

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2200
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO.
808.523.2575

MFURFURA@CARLSMITH.COM

May 4, 2010

VIA FACSIMILE

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510
Fax (202) 224-9516

The Honorable Jeff Sessions
Ranking Member, Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510
Fax (202) 224-9102

Dear Chairman Leahy and Ranking Member Sessions:

I am writing in support of Leslie E. Kobayashi, who has been nominated by President Obama to serve as an United States District Judge for the District of Hawaii.

Since 2009, I have been a partner in the Honolulu office of Carlsmith Ball LLP, practicing in both civil and criminal law. Prior to joining the firm, I spent a number of years in the federal government, including time as an Assistant United States Attorney (AUSA) in both the Southern District of New York and the District of Hawaii. From May 2007 through December 2008, I served as Associate Counsel to President George W. Bush.

I have known Judge Kobayashi since 2004, when I joined the United States Attorney's Office in the District of Hawaii and she was in her current position as an United States Magistrate Judge. I appeared before her regularly during my time as an AUSA; she presided over bail hearings, initial appearances and arraignments of defendants, and change of plea hearings in matters that I handled on behalf of the Government. Since my return to private practice, I have appeared before Judge Kobayashi several times in the civil context, including for scheduling and settlement conferences, as well as argument on a discovery motion.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00346 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.310

Based on my experiences before Judge Kobayashi, I am confident that she will make an outstanding United States District Judge, and I urge her swift confirmation. Judge Kobayashi is fair, thoughtful, and well-prepared for every matter; her only agenda is to follow the law faithfully. While she always maintains total control of her courtroom, she consistently allows for each party to articulate its position fully and treats each litigant, civil or criminal, with utmost respect. Her decisions are well-reasoned, thorough, and demonstrate a complete grasp of the relevant facts and law. She will make a wonderful addition to the U.S. District Court.

In sum, I strongly support the nomination of Leslie E. Kobayashi. Please do not hesitate to contact me if there is any additional information that I may provide.

Very truly yours,

Michael M. Pufpura

NOMINATIONS OF KATHLEEN M. O'MALLEY, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT; BERYL A. HOWELL, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; AND, ROBERT L. WILKINS, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

WEDNESDAY, JULY 28, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Whitehouse, Franken, and Sessions.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. It may look like musical chairs. Senator Whitehouse, who has filled in twice as chair already—this will be the second time today—while we have been doing these things, also had to balance his other assignments.

So I want to begin the hearing, and we will let him take over when he gets here.

I might say that one of the people who has been nominated and will be before the Committee is Beryl Howell. And I feel strange, in a way, introducing her to the committee, because those who served here from 1993 to 2002 will remember her as my general counsel; one of the most effective members of our Judiciary Committee staff, with a background as a highly decorated Federal prosecutor.

Senator Sessions will remember her work on many criminal justice and national security issues. Senator Hatch will, no doubt, remember her work on the Digital Millennium Copyright Act or Anti-Cyber Squatting Consumer Protection Act and our No Electronic Theft Act.

And then to also remind some of my other colleagues on the other side, Senator Kyl and Senator Grassley, recall her work on the National Information Infrastructure Protection Act, our Com-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00349 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

puter Fraud and Abuse statute, and on important oversight matters, including the bipartisan hearing we had on Ruby Ridge, which led to some much overdue improvements at the FBI.

Senator Cornyn, of course, will be interested in her work on the electronic freedom of information initiatives. In that regard, I think she is the only nominee I can recall who has been inducted into the Freedom of Information Act Hall of Fame.

What some of you may not know is her background before she joined the Senate staff. She grew up in a proud military family.

And, Colonel, we are glad to have you here.

She was awarded an undergraduate degree with honors in philosophy from Bryn Mawr College in Pennsylvania. She earned her law degree at Columbia University School of Law, where she was a Harlan Fiske Stone scholar. She clerked for Judge Dickinson Debevoise in the United States District Court for the District of New Jersey. And having worked as a student assistant in the U.S. Attorney's Office, she joined the U.S. Attorney's Office for the Eastern District of New York in 1987. She worked there for almost 6 years, and rose to be deputy chief of the narcotics section.

Her grand jury investigations and prosecutions included complex public corruption, narcotics, and money laundering cases involving the leadership of the Chinatown Flying Dragons gang, the Cali drug cartel and others.

Descriptions of her cases read like crime novels. She successfully prosecuted the leadership of a Chinatown gang, called the Flying Dragons, for heroin trafficking and extradited the head of the gang after he fled to Hong Kong; a case of you can run, but you cannot hide.

She successfully prosecuted a group of Colombian drug dealers and arrested the gang members just as they were packing almost $20 million in cash from narcotics proceeds into a hidden compartment of a truck to smuggle it out of the country.

Incidentally, your son is listening to this very carefully, hearing about some of the things his mom did.

Then some of these defendants attempted a prison escape by bribing officials and she successfully prosecuted the perpetrators of the escape plan.

She handled the successful investigation and prosecution of over 20 corrupt New York City building inspectors involved in extortion. Her work was recognized by twice being awarded the U.S. Attorney's Special Achievement Award for Sustained Superior Performance; by commendations from the FBI, DEA, the New York City Department of Investigation, and ultimately by the prestigious Attorney General's Director's Award for Superior Performance.

I always felt lucky to have hired her and that she was willing to come work here. She left us in 2003 to help establish the Washington, D.C. office of a consulting and technical services firm specializing in digital forensics.

And her work in the private sector assisted in a government cyber extortion investigation. She received the FBI Director's Award; and she was a member of the Commission on Cyber Security and of the Center for Strategic International Studies; Ms. Howell taught legal ethics as an adjunct professor at American's University's, Washington College of Law, and she has twice been con-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00350 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

firmed by the Senate to serve as a member of the bipartisan U.S. Sentencing Commission, to which she was appointed by President Bush; and, on and on.

I will put the whole statement in the record.

But one of the things that I like very much is she and her husband, Michael, have raised three children in the District, and they are long-time citizens here, and I am proud of them.

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

Chairman LEAHY. Then because I know that both Senator Brown and Representative Norton have to leave, let me turn to you for the introductions you want to make, and then we can begin the hearings.

PRESENTATION OF KATHLEEN M. O'MALLEY, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT BY HON. SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator BROWN. Thank you very much, Mr. Chairman, Senator Sessions, Senator Whitehouse, Senator Franken. Thank you for your attention and your service.

It is my pleasure to introduce Judge Kathleen McDonald O'Malley, a brilliant, dedicated, and trail-blazing jurist. She was raised in Richmond Heights, a Cleveland suburb, supported and nurtured by a typical large Irish Catholic family, many of whom are here today.

Judge O'Malley said that her parents, Thomas and Mildred, whom we call Billie McDonald, in particular, have been the greatest influence in her life.

I want to extend my greetings to Kate's mother, Billie McDonald, who is proudly watching the hearing via Webcast. So, Billie, thank you for joining us.

As a father of three daughters, I know our children's successes are sweeter than our own, and congratulations to her mother.

I would also like to recognize Kate's other family members who are here. Her husband, George Pappas, over my left shoulder; daughter, Nora, and son, Jack, who celebrated his 21st birthday on Monday. Kate's brothers, Kevin and Brian McDonald, are also here, along with numerous cousins and nieces and friends.

Many of Judge O'Malley's current and former clerks have traveled from around the Nation to be here today, she told me seven of them, and that speaks volumes, seven of them are in the audience today.

Today is a little bittersweet. Should this Committee and the Senate concur, the people of Ohio will lose one of our finest judges. But it is a proud day for me to speak about her accomplishments and to share her story with this Committee and with the Nation.

As a child, Kate was blessed with wisdom beyond her years. It was clear what she wanted to do with her life. At the age of 12, she was asked what she wanted to be when she grew up. She replied that she wanted to be a Federal judge.

As she excelled, not—centerfield for the Cleveland Indians for me, Federal judge for her. As she excelled—and she has, obviously, done better than I have, too.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00351 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

As she excelled in school, high school, college and law school, in her words, "It never occurred to me that I couldn't."

She graduated phi beta kappa from Kenyon College in Gambier, Ohio, not far from where I grew up, in 1979. She was first in her class, with one of the Nation's finest law schools, Case Western Reserve Law School near Cleveland.

After law school, Kate clerked for the Sixth Circuit Court of Appeals, for the very distinguished Judge Nathaniel R. Jones, who was one of her major influences and considers Kate to be like family.

The *Cleveland Plain Dealer* wrote in 1994 that her clerkship with Judge Jones taught her that as a judge, quote, "You have to be true to the law, you have to be intellectually honest."

After her clerkship with Judge Jones, Kate spent several years in private practice, she gained invaluable experience representing numerous large corporations, in addition to medium-sized and small businesses.

She became an expert in complex corporate litigation, patent and intellectual property cases, experience that will serve her well as a circuit judge in the Federal circuit.

She translated her private sector experience into a distinguished career in public service as chief counsel and chief of staff for then Ohio Attorney General Lee Fisher. Kate used her brilliant mind and incredible work ethic to litigate major state and Federal constitutional cases at both the trial and appellate levels. Her responsibility that employs intellect and temperament required in the Attorney General's office has served her well through her career, and people on this Committee are certainly familiar with that.

Recognizing her brilliance, her good legal mind, her superior work ethic, Ohio Senators Howard Metzenbaum and John Glenn recommended Kate's name to President Clinton for a place on the Federal bench on September 20, 1994.

President Clinton nominated her to serve on the Federal bench as a U.S. District Judge for the Northern District of Ohio. When Judge O'Malley began her service on the northern district bench, she was among the youngest judges serving on the Federal bench. And for the last 15 years, Judge Kate O'Malley, still one of the youngest, has served the northern district of Ohio with distinction.

In case there is any doubt as to her experience, she has handled approximately 4,000 civil cases, 800 criminal cases, three major multi-district litigation cases, including one with 20,000 claimants and another with 12,000 separate cases.

And she is an innovator. She has spearheaded national efforts to integrate cutting-edge technologies into courtrooms, ensuring that the administration of justice is equal and fair and open to all who seek it.

As an educator, Judge O'Malley has generously given back to her alma mater, Case Western, to teach the next generation of patent lawyers and advocates. And as a strong believer in pro bono service, she encourages students and clerks, lawyers and educators alike to provide legal services to those who clearly need them.

She will make an outstanding judge in the U.S. Court of Appeals for the Federal Circuit. Her distinguished career pursuing justice

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00352 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

based on merits and devoid of ideology or hidden agenda will bring an important new voice to the courtroom.

In closing, what maybe amuses me the most about Kate is when asked what is the one thing that people would not know about her, she replies, "Most people don't know that I'm a Federal judge," the way that she carries herself and acts, because to most people, she is a wife, mother, daughter, sister, friend, Lacrosse coach, soccer coach.

She is all those things in the community and all those things as a human being. That is what makes me proud to introduce and to support Judge Kate O'Malley.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

And, Judge, you should know that he says these nice things about you when you are not here, too, and has.

[Laughter.]

Chairman LEAHY. And if you ever watch the Senate during a vote, you see the various Senators huddling, Republicans, Democrats. Senator Sessions and I get more work done in this Committee between votes, huddling off in a corner, but you see Senator Brown whispering—and he cannot whisper.

Senator BROWN. I do not whisper, Mr. Chairman.

Chairman LEAHY. In my ear.

Senator BROWN. I try to whisper, but it just carries too much.

Chairman LEAHY. Senator Brown, I know you are supposed to be elsewhere, and feel free to do it.

Senator Franken.

Senator FRANKEN. Do we get questions?

Chairman LEAHY. Of Senator Brown, no.

[Laughter.]

Chairman LEAHY. I thought about it, but we would all have too many and we would be here all afternoon.

PRESENTATION OF BERYL A. HOWELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA AND ROBERT L. WILKINS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA BY HON. ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Representative Norton and I have served together for a lot of years. She stays young, I grow old, but we still serve together, and we both had enduring interest in the District of Columbia.

Representative Norton, I am proud to have you here.

Representative NORTON. Thank you very much, Mr. Chairman. And I want to thank you, Senator—right here—I worked with you before on Federal judges, U.S. attorney, when President Clinton gave me senatorial courtesy. It is a pleasure to still be able to work with you as you sit once again as chair.

And I want to thank you and Ranking Member Sessions for inviting me to introduce the two nominees for United States District Court for the District of Columbia. Both of them are Washingtonians that I am proud to represent and to introduce, Beryl Howell and Robert Wilkins.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00353 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Robert Wilkins graduated in chemical engineering from Rose-Hulman Institute of Technology in 1986 and from Harvard Law School in 1989, where he served as executive editor and common editor of one of the law reviews.

He clerked for Judge Earl B. Gilliam of United States District Court for the Southern District of California. Mr. Wilkins is currently a partner in the Washington, D.C. law firm of Venable, LLP, where he practices primarily in corporate defense, white collar technology and commercial litigation.

He previously has worked as an attorney for the Public Defenders Service for the District of Columbia, where he was chief of special litigation from 1996 to 2000.

Beryl Howell received her J.D. from Columbia University School of Law in 1983, and her BA from Bryn Mawr College in 1978. After law school, Ms. Howell was a law clerk to U.S. District Court Judge Dickinson B. Debevoise of the District Court of New Jersey, and worked in private practice as an associate of the law firm of Schulte Roth & Zabel.

She then was an assistant United States attorney for the Eastern District of New York, where she became deputy chief of the narcotics section. And as you have, I think, perhaps, most authoritatively, Mr. Chairman, outlined in great detail, in much greater detail than I would ever know. She has served in a number of different posts, but perhaps particularly notably, your own staff and as your own general counsel of this Senate Subcommittee on the Judiciary, and as your own senior adviser. So she comes well recommended before this committee, to say the very least.

Robert Wilkins and Beryl Howell have both enjoyed a full range of the experience and intellectual background that has helped them earn reputations as excellent lawyers and makes them ideal candidates for the U.S. District Court for the District of Columbia.

I am pleased to represent them and to recommend them both to you.

Chairman LEAHY. Thank you very, very much.

What I am going to do, and this is no lack of respect for any of the nominees, I am going to slip out. Senator Sessions is going to handle the hearing for me.

I thank Representative Norton especially for coming over, because she has to cross the whole campus to get here, and I appreciate that.

Senator SESSIONS. I appreciate you delegating the chairmanship to me for a change. You are getting nicer and nicer as election coronation gets closer.

[Laughter.]

Chairman LEAHY. I hope you have enjoyed it. I just took it back.

[Laughter.]

Senator SESSIONS. Brief though it is. Mr. Chairman, before you leave, I think you probably heard that the House has just passed the crack cocaine/powder bill, the Senate version. It will be sent to the President for signature, which I have enjoyed working with you on and Senator Durbin and others.

I believe we made a good step to improve justice and I know you agree.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00354 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Chairman LEAHY. I think we did. There was a lot of back-and-forth and compromise, and, Senator Sessions, I applaud what you did on that, and Senator Durbin, what he did.

The crack and powder cocaine disparity has bothered me greatly. Ms. Howell has had experience with that on the Sentencing Commission. And I have never been able to understand why somebody who is in the highest levels of society, or their business, whatnot, can pay $200 for cocaine in one form and if they are caught, they are probably going to do some community service. A black kid in the inner city paid $200 for another kind of cocaine and ended up going to prison and their life ruined.

I think it is unfair. So I am delighted to see this. I know the President is going to sign it.

Senator WHITEHOUSE. [Presiding.] All right. We will now have Judge O'Malley come forward.

[Nominee sworn.]

Senator WHITEHOUSE. Thank you. Please be seated. Welcome. Why don't I give you a chance to introduce for the record all of your family who are here with you or who may be watching? I gather your mom is watching over the Webcast.

STATEMENT OF KATHLEEN M. O'MALLEY, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Judge O'MALLEY. Yes, my mom is watching on the Webcast.

First, I would like to thank Chairman Leahy and Ranking Member Sessions for scheduling this hearing. I truly appreciate it. And thank you, Senator Whitehouse, for agreeing to chair it.

I also want to thank President Obama for the faith in me that this nomination shows. I want to thank Senator Brown, who is always charming, and I want to thank him for his kind words. And I would like to thank Senator Voinovich, who couldn't be here, but did write to the President on my behalf and has agreed and told me that he is going to submit a statement for the record in support.

Thank you, Senator Franken, for being here.

I won't introduce all of my family and friends that are here, because we would be here all day, but I will introduce a few, if that's okay with you.

Senator WHITEHOUSE. Of course.

Judge O'MALLEY. First, of course, my husband, who has already been introduced, is George Pappas. My children, Nora and Jack O'Malley. My brother, Kevin McDonald and his wife, Marybeth, and his daughters, Megan and Molly. My brother, Brian McDonald, and his wife, Chris, and his daughter, Claire.

And I also have here two other nieces and nephews, Eleni and George Alafoginis, from the Greek side of the family.

There are lots of friends. I have friends that have come from Ohio for me, I have friends from Massachusetts. I have Judge Marvin Garvis, who came from Maryland to support me. And I also have seven of my current and former law clerks, who I am thrilled came all the way to be here.

So there are lots of other friends and family that are watching. I do want to say hello to my mother, and I want to say that my

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00355 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

dad and my brother, Tom, were both with me 16 years ago and, unfortunately, have passed away, but they would have loved this.

So thank you, Senator.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00356 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Kathleen McDonald O'Malley ("Kate O'Malley")
   (Formerly: Kathleen Patricia McDonald)

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

   United States Circuit Judge for the Federal Circuit

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

   Office: Carl B. Stokes United States Courthouse
   801 West Superior Ave., Suite 16A
   Cleveland, Ohio 44113

   Residence: Chagrin Falls, Ohio

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

   1956; Drexel Hill, Pennsylvania

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

   1979-1982, Case Western Reserve Univ. School of Law; J.D. (Order of the Coif), 1982

   1975-1979, Kenyon College; A.B. (dual degree magna cum laude), 1979

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

66720.312

1994-Present
United States District Court for the Northern District of Ohio
Carl B. Stokes United States Courthouse
801 West Superior Ave., Suite 16A
Cleveland, Ohio 44113
United States District Judge

2006 & 2002-2004
Case Western Reserve University School of Law
11075 East Blvd.
Cleveland, Ohio 44106
Faculty (Distinguished Visiting Jurist)

1991-1994
Office of the Ohio Attorney General
30 East Broad St., 17th Floor
Columbus, Ohio 43266-0410
First Assistant Attorney General and Chief of Staff (1992-1994)
Chief Counsel (1991-1992)

1985-1991
Porter, Wright, Morris & Arthur, LLP
Huntington Building
925 Euclid Ave., 17th Floor
Cleveland, Ohio 44115
Partner (1991)
Associate (1985-1991)

1983-1984
Jones Day (Formerly Jones, Day, Reavis & Pogue)
901 Lakeside Ave.
Cleveland, Ohio 44114
Associate

1982-1983
United States Court of Appeals for the Sixth Circuit
100 East Fifth St.
Cincinnati, Ohio 45202
Law Clerk to the Honorable Nathaniel R. Jones

1982
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Summer Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00358 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.313

1981-1982
Case Western Reserve University School of Law
11075 East Boulevard
Cleveland, Ohio 44106
Instructor: Research, Advocacy, and Writing

1981
Shearman & Sterling
599 Lexington Ave.
New York, New York 10022
Summer Associate

1980
Kelley, McCann & Livingstone
200 Public Square, 35th Floor
Cleveland, Ohio 44114-2302
Summer Associate

1979
Hollingsworth & Hollingsworth
1440 Rockside Rd.
Independence, Ohio 44131
Summer Docket Clerk (Part-time)

1976-1978
Systems Sales, Inc.
Cleveland, Ohio 44143
Clerical Assistant (Part-time, Summers Only)

Other Affiliation (uncompensated)

1991-1994
Opera Columbus
177 E. Naghten St.
Columbus, Ohio 43215
Member, Board of Directors

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00359 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.314

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

Commencement Speaker, Kenyon College (1995)
Honorary Degree from Kenyon College, Doctor of Laws (1995)
Case Western Reserve University School of Law Distinguished Recent Graduate Award (1992)
International Trial Lawyers Award (1982)
Edwin G. Halter Memorial Scholarship (1980)
Order of the Coif (1982)
Phi Beta Kappa (1979)

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

Administrative Office of the United States Courts
Ad Hoc Committee on Technology (approximately 2005)
American Bar Association
Delegate, Task Force on Funding of the Civil Justice System. (1993)
Member, Special Committee on Youth Education for Citizenship (1993-1994)
Cleveland Bar Association
Columbus Bar Association
Civil Justice Reform Task Force (1994)
Federal Bar Association
Convention Committee (1990-1991)
Federal Circuit Bar Association
Chair, Judges Committee (2002-Present)
Federal Judges Association
Federal Judicial Center / National Academies of Science
Member, Joint Committee on Development of the Third Edition of the Reference Manual on Scientific Evidence (2007-Present)
John M. Manos Inn of Court
President (1999-2001)
Judicial Conference of the United States
Committee on Space & Facilities (2005-Present)
Ohio Center for Law Related Education
Case Committee (1992-1994)
Ohio Legal Assistance Implementation Committee (1992-1993)
Ohio Legal Assistance Foundation (1994)
Ohio State Bar Association
Sedona Conference
Advisory Board (2003-Present)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00360 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.315

Sixth Circuit Judicial Conference
Planning Committee Member (1999-2004)
District Judges Committee (1994-Present)
United States District Court for the Northern District of Ohio
Judicial Advisor, Local Patent Rules Committee (2009)
Committee on Alternative Dispute Resolution (1990-1991)

In addition, I have served on many committees relating to the administration of the United States District Court for the Northern District of Ohio.

10. **Bar and Court Admission**:

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

New York (Third Department), 1983
Ohio, 1983

I never practiced in New York and became an inactive member of its Bar shortly after admission. I became an inactive member of the Bar of Ohio when I became a judge in 1994. There has been no lapse in membership.

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

United States Court of Appeals for the Sixth Circuit, 1983
United States Court of Appeals for the Eleventh Circuit, 1984
United States District Court for the Northern District of Ohio, 1985
United States District Court for the Southern District of Ohio, 1983
New York Appellate Division (Third Department), 1983
Supreme Court of Ohio, 1983

There has been no lapse in membership.

11. **Memberships**:

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

Capital Club, Columbus, Ohio (Athletic and Dinner Club) (1992-1994)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00361 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.316

Case Western Reserve University School of Law, Dean's Advisory Board (2002-Present)
Cleveland Museum of Art (2007-Present)
Cleveland Skating Club (1995-approximately 2005)
Opera Columbus
Member, Board of Directors (1991-1994)
Shakespeare Society, Great Lakes Theatre Festival (approximately 2006-Present)
Society of the Benchers, Case Western Reserve University School of Law (approximately 1995-Present)
University of Maryland, Intellectual Property Advisory Board (2002-Present)

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

No.

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

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

PATENT CASE MANAGEMENT GUIDE, Berkeley Center for Law & Technology (Judicial Advisory Board, 2009)

ANATOMY OF A PATENT CASE, Complex Litigation Committee, American College of Trial Lawyers (Advisory Board, 2009)

The Honorable Kathleen M. O'Malley, The Honorable Patti Saris, and The Honorable Ronald H. Whyte, *A Panel Discussion: Claim Construction from the Perspective of the District Judge*, 54 CASE W. RES. L. REV. 671 (2004)

Symposium, *A Novel Approach to Mass Tort Class Actions: The Billion Dollar Settlement in the Sulzer Artificial Hip and Knee Litigation*, 16 J.L. & HEALTH 169 (2001/2002)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00362 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.317

Law Review Editor: I was a member of the Case Western Reserve Law Review from 1980-1982 and edited articles written by others in that capacity. I do not recall the names of the specific articles I edited.

Newspaper Articles: During college, I wrote for the *Kenyon Collegian*, the school newspaper. I do not have copies of any of the articles that I wrote, nor do I specifically recall the titles of the articles.

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

In my capacity as First Assistant Attorney General I often spoke publicly as a surrogate for the Attorney General. These statements and/or legislative testimony generally related to the operations and initiatives of the office and/or to the status of legal matters of interest to the office. None addressed or expressed legal policy views that were personal to me, as opposed to the Office of the Attorney General. I do not have notes of any of them.

The Sedona Conference Journal, *Cooperation Proclamation*, Vol. 10 Suppl. (Fall 2009) – As a member of the Advisory Board of The Sedona Conference, I have formally endorsed the recent publication encouraging cooperation in civil discovery. The Sedona Conference regularly issues "white papers" on topics relating to complex litigation, on which I have occasionally offered informal comment to committees and drafters.

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

I testified before the United States Senate Committee on the Judiciary on October 6, 1994, in connection with my nomination to be United States District Judge for the Northern District of Ohio.

In my capacity as First Assistant Attorney General of Ohio from 1993-1994, I often spoke publicly as a surrogate for the Attorney General, including before state legislative bodies. These speeches generally related to the budget, operations and initiatives of the office and/or to the status of legal matters of interest to the office. None of these speeches addressed or expressed legal policy views that were personal to me, as opposed to the Office of the Attorney General. I do not have notes of any of them.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00363 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.318

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

I frequently present or serve as a panelist at bar association events, continuing legal education seminars, and bar and academic conferences. I have not maintained a comprehensive, running listing of such appearances. I have, however, attempted to list below as many of my speaking engagements as possible by searching my archives, reviewing available calendars from past years, and searching my own memory of these events.

I do not always prepare written versions of my remarks or notes, and I have done so less frequently in recent years. I also have not made it a practice to keep copies of my remarks or notes.

Remarks to Participants in Take Our Daughters to Work Day, Office of Ohio Attorney General (Apr. 28, 1993)
Remarks as a New Judge, Federal Bar Association Luncheon, Cleveland, OH (Jan. 23, 1995)
Lecture on Alternative Dispute Resolution Options, Case Western Reserve University ("CWRU") Law School, Cleveland, OH (Apr. 11, 1995)
Lecturer, Practice and Procedure Clinic, Cleveland Bar Assoc. (Apr. 24, 1995)
Remarks at Dinner Honoring United States Circuit Judge Nathaniel R. Jones, Cincinnati, OH (May 20, 1995)
Commencement Address, Kenyon College, Gambier, OH (May 21, 1995)
Orientation Speaker for New Students, CWRU Law School (Aug. 25, 1995)
Speaker, People's Law School Program, Cleveland Bar Assoc. (Sept. 9, 1995)
Alternative Dispute Resolution Seminar, CWRU Law School (Apr. 12, 1996)
Dinner Speaker, Intellectual Property Law Assoc., Cleveland, OH (Oct. 16, 1996)
Perspectives on Communicating Complex Damage Testimony (Judges Panel), Price Waterhouse, LLP, Cleveland, OH (Apr. 18, 1996)
Career Day Speaker, Regina High School, Cleveland, OH (Feb. 25, 1997)
TROs & Preliminary Injunctions, Ohio CLE Inst., Columbus, OH (Apr. 24, 1997)
Women in the Law (Panel), Cleveland Bar Assoc. (May 21, 1997)
Speaker, All Ohio Annual Inst. on Intellectual Property, Cleveland, OH (Sept. 11, 1997)
"How to Try a Patent Jury Case under *Markman* and *Hilton-Davis*," Cincinnati, OH (Sept. 12, 1997)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 22-24, 1997)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00364 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.319

"Resolving the Dispute in Federal Court," Lorman CLE Ed. Servs., Columbus, OH (Dec. 12, 1997)
"Evidence for the Trial Lawyer," Nat'l Practice Inst., Cleveland, OH (May 8, 1998)
Topics in Patent Litigation, Am. Intellectual Prop. Law Assoc., Washington, DC (Oct. 16, 1998)
Judicial Perspective on Federal Litigation, Cleveland Bar Assoc., Cleveland, OH (Dec. 16, 1998)
Hi-Tech Courtroom of the Future, Federal Courts & Practice Seminar, Cleveland, OH (May 13, 1999)
Hi-Tech Practice in the Courtroom and the Office, Cleveland Bar Assoc. Labor and Employment Law Seminar, Cleveland, OH (May 27, 1999)
Memorial Day Speech, Chagrin Falls Blossom Weekend, Chagrin Falls, OH (May 31, 1999)
Intellectual Property (Panel), Sixth Circuit Judicial Conference, Traverse City, MI (June 25, 1999)
Remarks at the Federal Criminal Practice Seminar, Federal Public Defender for the Northern District of Ohio, Cleveland, OH (Aug. 20, 1999)
Expert Witnesses, Tactics Lecture, CWRU (Sept. 20, 1999)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 23-24, 1999)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (May 5, 2000)
Presiding Judge for Mock Trial regarding Sexual Harassment, Cleveland Bar Association Labor and Employment Law Seminar (May 25, 2000)
The State of Patent Claim Construction (Panel), ABA Intellectual Prop. Seminar (June 21-24, 2000)
The Federalization of State Causes of Action (Panel Moderator), Federal Bar Annual Convention, Cleveland, OH (Sept. 22, 2000)
The High-Tech Courtroom and Use of Technology in Litigation, Ohio Academy of Trial Lawyers, Cleveland, OH (Sept. 29, 2000)
Claim Construction Post-*Markman* (Panelist and Speaker), Nat'l Inventors Hall of Fame, Akron, OH (Sept. 5, 2001)
Objections at Trial and How to Deal with the Difficult Lawyer (Panelist and Speaker), Cleveland Bar Assoc. and Nat'l Practice Inst. (Nov. 16, 2001)
Federal Court Practices (CLE Panelist and Speaker), Federal Court Training Program (Dec. 6, 2001)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Dec. 21, 2001)
Memorial Service for Deceased Lawyers, Cleveland Bar Assoc. (Feb. 27, 2002)
Tips for Taking and Defending Depositions in a Patent Case, ABA Intellectual Prop. Seminar, Washington, DC (Apr. 12, 2002)
"Clarence Darrow—Crimes, Causes, and the Courtroom" (Panelist on theatrical presentation), Cleveland Bar Assoc. (June 26, 2002)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 26-27, 2002)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00365 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.320

"Attorneys' Fees and Costs Considerations in Multi-District Litigation (Panel Moderator), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 21-23, 2002)

Class Actions and Mass Torts, Louisiana Bar Assoc., New Orleans, LA (Oct. 25, 2002)

Markman Hearings, Cleveland Intellectual Prop. Law. Assoc. (Nov. 12, 2002)

Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Dec. 6, 2002)

Intellectual Property Cases as Viewed from the Bench, ABA Law Ed. Inst., Snowmass, CO (Jan. 5, 2003)

Memorial Service for Deceased Lawyers, Cleveland Bar Assoc. (Feb. 26, 2003)

Mass Torts Litigation: Where We Have Been and Where We Are Going (Mar. 7, 2003)

"White Collar Crime Prosecutions" (Speaker and Panelist), Sixth Circuit Judicial Conference, Memphis, TN (Apr. 10-12, 2003)

Symposium, "A Novel Approach to Mass Tort Class Actions: The Billion Dollar Settlement in the Sulzer Artificial Hip and Knee Litigation," (Panelist) (April 30, 2003) available at 16 J.L. & HEALTH 169 (2001/2002)

Speaker, Law Day, Cleveland, OH (May 2, 2003)

Class Actions (Panelist), Federal Bar Seminar, Cleveland, OH (May 8, 2003)

Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 28, 2003)

"Efficient Disposition of Cases or, At Least, How to Narrow the Issues," Fed. Cir. Bar. Assoc., Amelia Island, FL (May 22-24, 2003)

Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Aug. 1, 2003)

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 18-19, 2003)

"*Daubert* in Our Districts" (Panelist), Ohio Bench and Bar Conference, Columbus, OH (Oct. 3, 2003)

"Settlement Dynamics" (Keynote), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 27-29, 2003)

Advanced Jury Issues and Case Management Issues (Faculty Panelist), Sedona Conference, Sedona, AZ (Nov. 6-7, 2003)

"The Past, the Present and the Future of the Federal Circuit" (Keynote Panelist, with The Honorable Patti Saris and The Honorable Ronald H. Whyte), CWRU (Nov. 14, 2003), available at 54 CASE W. RES. L. REV. 671 (2004)

Settlement Dynamics (Speaker and Panelist), ABA Litigation Section, Philadelphia, PA (Nov. 20, 2003)

IP Litigation and Case Management (Panelist), Assoc. of Corp. Patent Counsel, Las Croabas, PR (Feb. 1-4, 2004)

"Interlocutory Appeals from *Markman* Hearings" & "Are District Judges Equipped to Resolve Patent Cases?" (Panelist), Fed. Cir. Bar Assoc. Bench and Bar Conference, Colorado Springs, CO (June 25-28, 2004)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00366 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.321

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 30-Oct. 1, 2004)
Maximizing Legal Education through Technology, Rutgers Univ., Newark, NJ (Oct. 15, 2004)
Complex Litigation: Litigating Mass Torts (Faculty Presenter), Sedona Conference, Sedona, AZ (Apr. 7-8, 2005)
"A Judge's Perspective on Electronic Discovery," Am. Intellectual Prop. Law Assoc., Philadelphia, PA (May 12-13, 2005)
Faculty Presenter, Intellectual Property Law Seminar, Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 25-27, 2005)
"Matters of Interest in IP Law" & "Perspectives From the Bench," Fed. Cir. Bar Assoc. Bench and Bar Conf., Kiawah, SC (June 23-25, 2005)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 29-30, 2005)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Oct. 21, 2005)
"Damages and Remedies in IP Cases," Int'l Judges Conference on Intellectual Prop. Law, Washington, DC (Oct. 24-26, 2005)
Guest Lecturer in Professor Paul Giannelli's Criminal Procedure class, CWRU Law School, Cleveland, OH (Approximately February, 2006)
"*Markman* Mark Ten Years; Assessing Its Impact," Intellectual Prop. Law Conference, Arlington, VA (Apr. 7, 2006)
"Litigating, Settling and Insuring Mass Tort Claims," Harris Pub. Co., Las Vegas, NV (Apr. 27-28, 2006)
"Role of the Court and Counsel in the Administration of Justice in the Federal Courts of Appeal," Fed. Cir. Bench and Bar Conf., Albuquerque, NM (June 28-July 1, 2006)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Aug. 4, 2006)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 28-29, 2006)
"Evidence Issues and Jury Instructions in ADA and FMLA Litigation" (Speaker and Panelist), ALI-ABA Course of Study, Georgetown Univ. Sch. of Law (Feb. 8-9, 2007)
"Patent Injunctions," Intellectual Prop. Owners Inc., Washington, DC (Mar. 27, 2007)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (May 18, 2007)
Faculty Presenter, "Intellectual Property in the New Technological Age," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 30-June 1, 2007)
"Practical Tips for Litigating Patent Cases," Patent Law Symposium, George Mason Univ., Arlington, VA (July 17, 2007)
"Drug and Medical Device On Trial" (Speaker and Panelist), Am. Conference Inst., New York, NY (July 18-19, 2007)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00367 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.322

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Scottsdale, AZ (Feb. 28-29, 2008)
"Technology in the Courtroom and Electronic Evidence," Assoc. of Defense Trial Attorneys, Charleston, SC (Apr. 9-13, 2008)
"'Hot' Topics in Intellectual Property Law," ABA Intellectual Prop. Law Seminar, Washington, DC (Apr. 12, 2008)
"A View from the Trial Court" (Panelist), Fed. Cir. Judicial Conference (May 14-15, 2008)
Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 21-23, 2008)
Guest Speaker, "Brown Bag Lunch," Federal Bar Association, Cleveland, OH (July 2, 2008)
"Streamlining Techniques for Complex Litigation" (Keynote), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 27-29, 2008)
"Intellectual Property Crimes," Fed. Bar Assoc., Cleveland, OH (Feb. 5, 2009)
"Constitutional Rights in the Realm of Spousal or Child Abuse Cases," Am. Coll. of Trial Lawyers, Puerto Rico (Feb. 26-Mar. 1, 2009)
"Transnational Enforcement of IP Rights" (Panelist), Int'l Judges' Conference, Washington, DC (Apr. 21, 2009)
Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 27-29, 2009)
"Circuit and Trial Court Dialogue Regarding IP Cases," Fed. Cir. Bench and Bar Conference, White Sulphur Springs, WV (June 18-21, 2009)
"Judicial Perspectives on How to Present Technical Information to the Judge and Jury," Am. Coll. of Trial Lawyers Annual Meeting, Boston, MA (Oct. 8, 2009)
"The Supreme Court & Federal Circuit Court: What Lies Ahead and What is the Effect on Practitioners," Am. Intellectual Prop. Law Assoc., Washington, DC (Oct. 15-16, 2009)
"Management of IP Cases" (Panelist), Ohio Bench and Bar Conference, Columbus, OH (Oct. 22-23, 2009)
"Managing Large MDLs Greater than 75 Cases" (Panel Moderator), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 26-28, 2009)

In addition to these listed presentations, I frequently have participated in programs at monthly meetings of the John M. Manos Inn of Court. I have not retained records of the specific dates or topics of these programs.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00368 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.323

Since my appointment to the federal bench, it has been my policy not to grant interviews to the press. On a handful of occasions, I have been profiled in publications, e.g., an alumni newsletter, local bar journal, or Federal Bar Association magazine, and have provided biographical information to that end. I specifically recall two published articles based on interviews I provided since being nominated to become a federal judge in 1994:

Spring 2002/Summer 2002 issue of *In Brief: The Magazine of Case Western Reserve University School of Law*

Mark Rollenhagen, "A Courtroom Revolution; U.S. District Judge Kathleen M. O'Malley Gives Her Space to the Future: Beaming Witnesses before a Jury and Launching Materials from Laptops," *Cleveland Plain Dealer*, Sept. 21, 1998

Cindi Leive, "A New Wave of Women Judges," *Glamour*, May 1995

Keith C. Epstein, "More Minorities, Women Named Federal Judges," *Cleveland Plain Dealer*, Sept. 25, 1994

T.C. Brown, "Just a Matter of Time: Federal Judge Appointee Awaits Robes," *Cleveland Plain Dealer*, Sept. 22, 1994

Steve Luttner, "Fisher Aid Top Choice for Federal Judgeship," *Cleveland Plain Dealer*, Aug. 17, 1994

Alan Johnson, "Attorney General's Chief Counsel 'Always Wanted to Be A Lawyer'; Job With Fisher is Very Demanding, Says Woman, 34," *Columbus Dispatch*, Aug. 19, 1991

In my capacity as First Assistant Attorney General of Ohio from 1993-1994, I often spoke publicly as a surrogate for the Attorney General. Comments I gave to the media generally related to the operations and initiatives of the office and/or to the status of legal matters of interest to the office. I made such comments to address or express the legal policy of the Office of the Attorney General, rather than my own personal views. I do not have copies of articles from those days, but they most likely would have appeared in the *Columbus Dispatch*, the *Cleveland Plain Dealer*, the *Akron-Beacon Journal*, the *Dayton Daily News*, the *Cincinnati Post*, or the *Youngstown Vindicator*.

I do not recall any other interviews and have not identified any by searching publicly-available databases.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00369 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.324

In 1994, I was appointed by President William Jefferson Clinton to be United States District Judge for the Northern District of Ohio.

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

In my fifteen years on the bench, I have handled approximately 4,000 civil cases and 800 criminal cases. In addition, I have presided over three major multi-district litigations: one with more than 20,000 claimants, a second with more than 12,000 cases, and a third with dozens of cases.

In addition to the multi-district litigation, I have presided over at least 60 criminal trials and 45 civil trials.

i. Of these, approximately what percent were:

jury trials:	85%
bench trials:	15%
civil proceedings:	80%
criminal proceedings:	20%

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Liability*, Master Case No. 1:01cv9000, MDL Docket No. 1401.

By order of the Judicial Panel on Multidistrict Litigation ("MDL"), several personal injury cases were transferred to me for coordinated pretrial proceedings in 2001. Thereafter, more than 400 additional cases, including 34 putative class actions, also were made a part of the MDL. Plaintiffs alleged injuries caused by manufacturing defects in the defendant's hip and knee implants.

Ultimately, the parties reached a class action settlement and agreed to a claims administration process that put more than $1 billion into the hands of injured claimants. Further, the vast majority of these funds were delivered within three years of the inception of the MDL. In addition to issuing several substantive legal

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00370 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.325

opinions, I worked with the parties to structure an appropriate and workable settlement, conducted preliminary and final fairness hearings, determined appropriate attorneys' fee awards, and presided over the opt-out cases remaining post-settlement. A recapitulation of the entire litigation appears at *In re Sulzer Hip Prosthesis and Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003).

Liaison Counsel: R. Eric Kennedy, Weisman Kennedy & Berris, 1600 Midland Building, 101 Prospect Avenue, W., Cleveland, OH 44115, (216) 781-1111. Claims Administrator: James J. McMonagle, Vorys Sater Seymour & Pease, 2100 One Cleveland Center, 1375 East Ninth Street, Cleveland, OH 44114-1739, (216) 479-6158. Counsel for Plaintiffs: Stanley M. Chesley, Waite, Schneider, Bayless & Chesley, 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, OH 45202, (513) 621-0267. Defense Counsel: Harvey L. Kaplan & David W. Brooks, Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, MO 64105-2118, (816) 474-6550; Bradley D. Honnold (formerly with Shook, Hardy & Bacon), Goza & Honnold, LLC, 11150 Overbrook Road, Ste. 250, Leawood, KS 66211, (866) 767-1486.

2. *In re Telxon Corp. Sec. Litig.*, 5:98cv2876.

The *Telxon* litigation began as a class action securities fraud complaint filed under the then newly-enacted Private Securities Litigation Reform Act ("PSLRA") asserting securities fraud claims against Telxon Corporation, certain of its officers and directors, and its auditing firm, PricewaterhouseCoopers ("PwC"). In addition to the twenty-seven securities fraud class actions consolidated under the case caption above, the litigation also included related cases *Hayman v. PricewaterhouseCoopers LLP*, Case No. 1:01cv1078 and *Wyser Pratte Mgmt. Co., Inc. v. Telxon Corp.*, 5:02cv1105. The shareholder claims arose out of a series of audit restatements. Given the passage of the PSLRA in 1995, this action required me to address a number of complicated and novel issues under that Act.

I ultimately approved a number of settlements in the case, and class distributions relating thereto. I also conducted numerous hearings and issued a number of substantive decisions during the course of the proceedings, including: *In re Telxon Corp. Sec. Litig.*, 67 F. Supp. 2d 803 (N.D. Ohio 1999) (consolidating twenty-seven putative securities fraud class actions and identifying lead plaintiffs); *In re Telxon Corp. Secs. Litig.*, 133 F. Supp. 2d 1010 (N.D. Ohio 2000) (denying motion to dismiss securities fraud class action under the PSLRA); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip op. 120 (N.D. Ohio Sept. 19, 2001) (granting motion for class certification); *Hayman v. PricewaterhouseCoopers LLP*, Case No. 1:01cv1078, slip. op. 38 (N.D. Ohio Aug. 26, 2002) (granting motion for class certification); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip ops. 386-93 (N.D. Ohio Dec. 2004-Jan. 2005) (evidentiary hearings regarding discovery and sanctions); *Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, Case No. 5:02cv1105, 2003 U.S. Dist. LEXIS 27882 (N.D.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00371 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.326

Ohio June 4, 2003) (resolving multiple motions to dismiss and certifying questions to the Ohio Supreme Court); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip ops. 236-40 (N.D. Ohio Feb. 13, 2004) (approving class action settlement as to certain aspects of cases, attorneys' fees, and allocation of settlement proceeds); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip op. 409 (N.D. Ohio Dec. 21, 2005) (final fairness hearing).

Plaintiffs' Counsel: Jeffrey C. Zwerling, Susan Salvetti & Richard A. Speirs, Zwerling, Schachter & Zwerling, 41 Madison Avenue, New York, NY 10010, (212) 223-3900; Brett S. Krantz, Kohrman, Jackson & Krantz, One Cleveland Center, 20th Floor, 1375 East Ninth Street, Cleveland OH 44114, (216) 696-8700. Defendants' Counsel: David C. Weiner, Squire, Sanders & Dempsey, 4900 Key Tower, 127 Public Square, Cleveland, OH 44115, (216) 479-8344; Arthur Kaufman, Hahn, Loeser & Parks, 2800 BP Tower, 200 Public Square, Cleveland, OH 44114, (216) 274-2263; Eric Lobenfeld, Hogan & Hartson, 875 Third Avenue, New York, NY 10022, (212) 918-8202; Jay Kelley Wright, Jeffrey L. Handwerker, and Stephen M. Sacks, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004, (202) 942-5000.

3. *United States v. Johnson*, Case No. 98cr98.

The defendant, a former Cleveland City Councilman and Ohio State Senator, was charged in a six-count indictment with Hobbs Act violations and wire fraud. The indictment was issued roughly one month after the defendant announced his intention to run for Congress. The defendant was alleged to have demanded $17,000 in campaign contributions and personal loans in exchange for using his position and influence to obtain liquor permits, lottery licenses, food-stamp permits, and licenses to accept food stamps for grocers between 1994 and 1996. Prior to trial, I granted defendant's motion to dismiss the wire fraud counts.

After a roughly two-week trial, a jury convicted the defendant on three of the four extortion charges. Shortly thereafter, the defendant resigned his Senate seat. I sentenced him to 15 months imprisonment with one year supervised release. The Court of Appeals affirmed. *See United States v. Johnson*, Case No. 98cr98, slip op. 98 (N.D. Ohio Feb. 19, 1999), *aff'd*, *United States v. Johnson*, Case No. 99-3259, 2000 U.S. App. LEXIS 22723 (6th Cir. Sept. 5, 2000) (affirming conviction in unpublished opinion).

This case is also significant because it was one of the first times a case was tried in a federal courthouse using high-tech equipment to facilitate the presentation of materials to the jury.

Counsel for the Government: Daniel P. Butler, Department of Justice, Public Integrity Section, P.O. Box 27518, Central Station, Washington, DC 20038, (202) 514-1412; Stephen P. Anthony (formerly with DOJ), Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004, (202) 662-5105. Counsel

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00372 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.327

for Defendant: Gerald Arthur Messerman, Messerman & Messerman Co., L.P.A., 56 River Marsh Lane, Kiawah Island, SC 29455, (843) 768-8900; Michael R. Hamed & Philip S. Kushner, Kushner & Hamed, 3740 BP Bldg., 200 Public Square, Cleveland, OH 44114, (216) 696-6700.

4. *Weatherchem Corp. v. J.L. Clark, Inc.*, Case No. 91cv35.

In this case, Weatherchem claimed that J.L. Clark, Inc., willfully infringed two patents owned by Weatherchem: Patent No. 4,693,399 (the "'399 patent") and Patent No. 4,936,494 (the "'494 patent"). The two patents are directed toward plastic "two-flap closures," which are commonly used as caps to seal cylindrical spice containers; the caps allow the contents to be sprinkled or spooned out. The defendant asserted counterclaims for invalidity, unenforceability, and noninfringement.

The parties tried this matter to the bench and I found that both patents were invalid. With respect to the '399 patent, in a decision later echoed by the Federal Circuit in *Pfaff v. Wells Electronics, Inc.*, 124 F.3d 1429 (Fed. Cir. 1997), *aff'd* 525 U.S. 55 (1998), regarding the concept of reduction to practice in application of the "on-sale bar," I found the patent invalid due to that statutory bar. I found the '494 patent invalid because it was obvious given the prior art, which included the enclosure embodying the claims of the '399 patent. In the alternative, I found that, as to the '494 patent, if it was valid, its claims were not infringed by the defendant's closures.

Plaintiff appealed, and the Federal Circuit affirmed my holdings as to invalidity and vacated as unnecessary the alternative findings I had made. *See Weatherchem Corp. v. J.L. Clark, Inc.*, 937 F.Supp. 1262 (N.D. Ohio 1996) (bench trial opinion ruling in favor of defendants), *aff'd in part, modified in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998).

Counsel for Plaintiff: Robert V. Vickers, Fay, Sharpe, Beall, Fagan, Minnich & McKee, 1100 Superior Avenue, Ste. 700, Cleveland, OH 44114, (216) 861-5582; Dennis G. Terez (formerly with Squire, Sanders & Dempsey), Office of the Federal Public Defender, Northern District of Ohio, 750 Skylight Office Tower, 1660 West Second Street, Cleveland, OH 44113, (216) 522-4856. Counsel for Defendants: John W. Kozak, H. Michael Hartmann & Christopher T. Griffith, Leydig, Voit & Mayer, Ltd., Two Prudential Plaza, 180 N. Stetson Avenue, Suite 4900, Chicago, IL 60601-6731, (312) 616-5600.

5. *United States v. Waller*, Case No. 04cr13.

In this case, the two defendants carjacked at gunpoint and held for ransom a cooperating witness of the FBI's New York office. While being held captive, the witness called his FBI contact in New York via cell phone. Eventually a meeting to exchange the witness for ransom was arranged between the FBI and the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00373 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.328

captors. When the FBI swat team arrived at the scene, a shoot-out occurred, during which the witness was shot and killed.

The defendants were charged in a nine-count indictment that included charges of carjacking and attempted murder of FBI agents engaged in official duties. I presided over a multi-week jury trial of both defendants in August 2004. The jury convicted each defendant on several counts.

I sentenced the defendants to 684 months and 552 months imprisonment, respectively. The Court of Appeals affirmed. *See United States v. Ervin, et al.*, 209 Fed. Appx. 519 (6th Cir. 2006). The Supreme Court denied certiorari. *See Waller v. United States*, 552 U.S. 907 (2007); *Ervin v. United States*, 550 U.S. 927 (2007).

Counsel for the Government: Blas E. Serrano & Kelly L. Galvin, Office of the U.S. Attorney – Cleveland, Northern District of Ohio, 801 W. Superior Avenue, Ste. 400, Cleveland, Ohio 44113, (216) 622-3873; Nancy L. Kelley, Office of the U.S. Attorney – Akron, Northern District of Ohio, 208 Federal Building, 2 South Main Street, Akron, Ohio 44308, (330) 761-0515. Counsel for Defendant Waller: Michael G. Dane (former Federal Public Defender for the Northern District of Ohio), Retired. Counsel for Defendant Ervin: Laurence A. Turbow, Laurence A. Turbow, LPA, Inc., 4403 St. Clair Avenue, Ste. 300, Cleveland, Ohio 44103, (216) 881-7939

6. *United States v. City of Euclid ("Euclid I")*, Case No. 06cv1652; *United States v. Euclid City Sch. Dist. ("Euclid II")*, Case No. 08cv2832.

In *Euclid I*, the government filed a complaint alleging that the City of Euclid's method of electing its City Council violated Section 2 of the Voting Rights Act. In particular, the government alleged that the City of Euclid used a combination of single-member districts and slotted, at-large positions, resulting in the dilution of African-American voting strength. I conducted a bench trial and found a Section 2 violation. I ordered the City to redistrict, which resulted in the election of the first African American ever elected to the Euclid City Council. *See United States v. City of Euclid ("Euclid I")*, 580 F. Supp. 2d 584 (N.D. Ohio 2008).

In *Euclid II*, the government filed suit against the Euclid City School District Board of Education ("the Board") and the Cuyahoga County Board of Elections alleging that the at-large method of electing members of the Board, utilizing staggered terms, violates Section 2 of the Voting Rights Act. The parties noted that *Euclid I* considered the same population at issue and agreed that the findings in *Euclid I* were probative of and meaningful to the Court's assessment of liability in this case. Accordingly, the parties stipulated that the Board violated Section 2 of the Voting Rights Act. The parties disagreed, however, as to the remedy for this past discrimination. I considered the Board's proposed remedies – limited voting or cumulative voting – and concluded that the Board's limited voting

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00374 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.329

proposal remedied the Section 2 violation and was not itself violative of Section 2. *United States v. Euclid City Sch. Bd.* ("*Euclid II*"), 632 F. Supp. 2d 740 (N.D. Ohio 2009). No appeal was taken in *Euclid I*. While the government initially filed a notice of appeal in *Euclid II*, it dismissed that appeal prior to briefing.

Euclid I: Counsel for Plaintiff: Abel Gomez, Sean W. O'Donnell & Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW,Washington, DC 20530, (202) 305-1582. Counsel for Defendant City of Euclid: Hilary S. Taylor, Brian P Riley & John S. Kluznik, Sr., Weston Hurd, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, OH 44114, (216) 241-6602; L. Christopher Frey, City of Euclid, Department of Law, 585 East 222 Street, Ste. 200, Euclid, OH 44123, (216) 289-2746. Counsel for Defendant Cuyahoga County Board of Elections: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869.

Euclid II: Counsel for Plaintiff Counsel: Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 305-7781; Steven H. Wright, Jr., U.S. Department of Justice – Voting Section, Ste. 7123, 1800 G Street, NW, Washington, DC 20006, (202) 305-1050. Counsel for Defendant Euclid School District Board of Education: David Kane Smith & Krista K. Keim, Britton, Smith, Peters & Kalail, 3 Summit Park Drive, Ste. 400, Independence, OH 44131, (216) 503-5055. Counsel for Defendant Cuyahoga County Board of Elections Counsel: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County, Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869.

7. *Mid-Michigan Computer Sys., Inc. v. Marc Glassman, Inc.*, Case No. 00cv3117.

Plaintiff, a computer service provider to pharmacies, brought this suit against a pharmacy client and its technology partner. The services contract had included a "Source Code Agreement" to protect plaintiff's copyrighted software. Plaintiff brought a variety of claims in this case including breach of contract, fraud, copyright infringement, and misappropriation of trade secrets.

Plaintiff settled with the technology partner. I granted parts of several summary judgment motions filed by the pharmacy, leaving four remaining claims for trial: (1) breach of the software license agreements; (2) breach of technical support services agreements; (3) misappropriation of trade secrets; and (4) fraud.

A jury trial resulted in judgment in favor of the plaintiff, awarding compensatory and punitive damages in the amount of $7,347,795.78. Defendant filed a motion for judgment as a matter of law, new trial, or remittitur. I granted the motion for remittitur in part, finding that the jury's award of $280,000 in compensatory

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00375 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.330

damages flowing from MGI's breach of the software license agreements was excessive. I denied the remainder of the motion for remittitur and the motion for new trial.

The Sixth Circuit affirmed my decisions and the jury's verdict, including all aspects of the damages award, as revised by my remittitur order. *See Mid-Michigan Computer Sys. v. Marc Glassman, Inc.*, 416 F.3d 505 (6th Cir. 2005).

Counsel for Plaintiff: Michael K. Grace, Grace & Grace, 444 South Flower Street, Ste. 1650, Los Angeles, CA 90071, (213) 452-1224. Counsel for Defendant Marc Glassman, Inc.: Christopher B. Fagan (now deceased); Joseph D. Dreher, Fay Sharpe LLP, 1228 Euclid Avenue, 5th Floor, Cleveland, OH 44115, (216) 363-9130. Counsel for Defendant Two Point Conversions, Inc.: Joel I. Newman (formerly with Newman & Newman), 3645 Warrensville Center Road, Ste. 219, Shaker Heights, OH 44122, (216) 621-1541

8. Youngstown Mob Cases, including *United States v. Altshuler*, Case No. 4:97cr385.

Over a several-year period in the mid-to-late 1990s, I presided over a series of cases arising out of a decades-long investigation of organized crime in Youngstown, Ohio. These cases involved the prosecution of more than 60 defendants, and related to wide-scale government corruption, including of state judges, the County Prosecutor, several assistant prosecutors, the County Sheriff, the local Chief of Police, as well as numerous other law enforcement officials, local businessmen, and practicing lawyers. In total, I presided over trials in *Altshuler* and related cases nearly-continuously for an 18-month period.

In *Altshuler*, 30 co-defendants, including alleged Youngstown mob boss Lenine "Lenny" Strollo, were indicted for various charges including racketeering, illegal gambling, conspiracy, and, as to a few defendants, murder for hire. Most of the *Altshuler* defendants pled guilty (Strollo himself entered a last-minute plea while I was empanelling an anonymous jury). Because Strollo's plea agreement required extensive government cooperation, I waited until 2004, after he had satisfied these requirements, before sentencing him to 12 years and 8 months imprisonment. The information provided by Strollo to the Government was critical to several other successful mob-related corruption prosecutions of public officials. Where these defendants appealed, the Sixth Circuit affirmed.

Of the 30 co-defendants in the *Altshuler* case, only three went to jury trial (all were convicted and sentenced to life imprisonment). *United States v. Altshuler*, Case No. 4:97cr385, slip ops. 669-673 (N.D. Ohio Mar. 12, 1999). The Court of Appeals affirmed all trial proceedings, judgments, and sentences as to these three defendants. *See United States v. Riddle*, 249 F.3d 529 (6th Cir. 2001); *United States v. Riddle*, No. 99-3405, 2001 U.S. App. LEXIS 8893 (6th Cir. May 4, 2001). The Supreme Court denied certiorari. *See Turnage v. United States*, 534

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00376 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.331

U.S. 930 (2001); *Riddle v. United States*, 534 U.S. 930 (2001); *Altshuler v. United States*, 534 U.S. 930 (2001).

Counsel for the Government: Craig S. Morford (Former Assistant U.S. Attorney), Cardinal Health, Chief Compliance Officer, 7000 Cardinal Place, Dublin, OH 43017, (614) 757-5000; James Wooley (Former Assistant U.S. Attorney), Jones Day, Partner, North Point, 901 Lakeside Ave., Cleveland OH 44114, (216) 586-7345. Counsel for Lenine Strollo: Herbert L. Greenman & Paul J. Cambria , Jr., Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, 42 Delaware Avenue, Suite 300, Buffalo, NY 14202, (716) 849-1333; Orville E. Stifel, II, 5310 Franklin Boulevard, P.O. Box 602780, Cleveland, OH 44102, (216) 225-9855.

9. *In re Scrap Metal Antitrust Litig.*, Case No. 02cv844.

This was a class action suit brought against a number of defendants who operated businesses that buy residual scrap metal and resell it in Ohio and other states. The plaintiffs alleged that the defendants conspired to restrain trade, suppress and eliminate competition, and fix the price of scrap metal in Northeastern Ohio.

After years of litigation, including certain delays occasioned by deference to on-going criminal proceedings, all but three of the original defendants in this case were either dismissed by or settled with the plaintiffs. I presided over the fairness hearings on these settlements.

As to the remaining three defendants, the jury returned a split verdict after a three-week trial, finding only one of the three liable. The jury awarded an $11.5 million verdict against the liable defendant. Pursuant to 15 U.S.C. § 15(a), I trebled the jury's award to $34.5 million and then subtracted the amount received from the from other defendants' settlements. The losing defendants appealed the jury verdict and damages award and the Court of Appeals affirmed. *In re Scrap Metal Antitrust Litig*, 527 F.3d 517 (6th Cir. 2008), *cert. denied*, 129 S. Ct. 1673 (2009)

Lead Counsel for Plaintiffs: William A. Isaacson, Boies, Schiller & Flexner, 5301 Wisconsin Avenue, NW, Washington, DC 20015, (202) 237-2727; Edmund W. Searby, McDonald Hopkins, 600 Superior Avenue, East, Suite 2100, Cleveland, OH 44114, (216) 348-5400. Primary Counsel for Trial Defendants: William D. Beyer, Wuliger, Fadel & Beyer, The Brownell Building, 1340 Sumner Court, Cleveland, OH 44115, (216) 781-7777; Leslie W. Jacobs, Thompson Hine, 3900 Key Center, 127 Public Square, Cleveland, OH 44114, (216) 566-5675.

10. *United States v. City of Parma*, Case No. 73cv439.

In 1973, the Department of Justice sued the City of Parma alleging violations of the Fair Housing Act. More specifically, the government alleged that Parma had a policy of excluding African Americans from residing within its limits and that

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00377 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.332

the City engaged in various acts and practices which operated to deny equal housing opportunity to African Americans on the basis of race.

At the time I inherited this case as part of my new docket in 1994, it had been pending for more than 20 years and the differences between the parties were great. The case had been transferred among many judicial officers prior to being assigned to me. I conducted multiple settlement conferences over several months, including a single conference that itself spanned several days. Through this process, the parties settled. In the agreement, the City of Parma agreed to establish a public-housing board, pledged to spend $1 million on marketing the City to African Americans, enacted a fair-housing ordinance, and created a panel to handle complaints about housing discrimination. *See United States v. City of Parma*, Case No. 73cv439, slip op. issued Nov. 15, 1996 (N.D. Ohio Nov. 15, 1996) (regarding settlement agreement and dismissal).

Counsel for the Government: Diane L. Houk (formerly with the Department of Justice, Civil Rights Division Housing & Civil, Enforcement Section), Fair Housing Justice Center, 5 Hanover Square, 17th Floor, New York, NY 10004, (212) 400-8280. Counsel for Defendant: The Honorable Christopher A. Boyko (formerly with the Office of the Law Director – City of Parma) District Court Judge, N.D. of Ohio, 801 West Superior Avenue, Cleveland, OH 44113, (216) 357-7151; Gregory V. Mersol, Baker & Hostetler, 3200 National City Center, 1900 East Ninth Street, Cleveland, OH 44114, (216) 621-0200.

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

1. *United States v. City of Euclid*, 580 F. Supp. 2d 584 (N.D. Ohio 2008). Counsel for Plaintiff: Abel Gomez, Sean W. O'Donnell & Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW,Washington, DC 20530, (202) 305-1582. Counsel for Defendant City of Euclid: Hilary S. Taylor, Brian P Riley & John S. Kluznik, Sr., Weston Hurd, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, OH 44114, (216) 241-6602; L. Christopher Frey, City of Euclid, Department of Law, 585 East 222 Street, Ste. 200, Euclid, OH 44123, (216) 289-2746. Counsel for Defendant Cuyahoga County Board of Elections: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869

2. *D'Ambrosio v. Bagley*, Case No. 00cv2521, 2006 U.S. Dist. LEXIS 12794 (N.D. Ohio Mar. 24, 2006) *aff'd* 527 F.3d 489 (6th Cir. 2008). Counsel for Petitioner: John Q. Lewis & Edward J. Sebold, Jones Day – Cleveland, 901 Lakeside Avenue, Cleveland, OH 44114, (216) 586-1005; Jeffry F. Kelleher, 1540 Leader Bldg., 526 Superior Avenue, Cleveland, OH 44114, (216) 241-0520. Counsel for

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00378 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.333

Respondent: Michael L. Collyer, Office of the U.S. Attorney, Northern District of Ohio, Ste. 400, 801 Superior Avenue, W., Cleveland, OH 44113, (216) 622-3744; Stephen E. Maher, Office of the Attorney General State of Ohio, Capital Crimes Section, 30 East Broad Street, 23rd Floor, Columbus, OH, 43215-3428, (614) 728-7055.

3. *In re Commercial Money Ctr., Inc.*, Case No. 1:02cv16000, 2005 U.S. Dist. LEXIS 45490 (N.D. Ohio Aug. 19, 2005), *aff'd in part, rev'd in part*, *Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327 (6th Cir. 2007); *In re Commercial Money Ctr., Inc.*, Case No. 1:02cv16000, 2005 U.S. Dist. LEXIS 45488 (N.D. Ohio Aug. 19, 2005). Liaison Counsel for Bank Group: Martha Sullivan, Squire, Sanders & Dempsey, 4900 Key Tower, 127 Public Square, Cleveland, OH 44114, Phone: 216-479-8425. Liaison Counsel for Surety Group: Alan N. Hirth, Meyers Roman Friedberg & Lewis, 28601 Chagrin Blvd., Suite 500, Cleveland, OH 44122, Phone: 216-831-0542. Liaison Counsel for Third Parties: Alfred M. DeLaCruz, Manning & Marder Kass Ellrod Ramirez, 401 West A Street, Suite 1900, San Diego, CA 92101, Phone: 619-515-0269.

4. *Weatherchem Corp. v. J.L. Clark, Inc.*, 937 F.Supp. 1262 (N.D. Ohio 1996), *aff'd in part, modified in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998). Counsel for Plaintiff: Robert V. Vickers, Fay, Sharpe, Beall, Fagan, Minnich & McKee, 1100 Superior Avenue, Ste. 700, Cleveland, OH 44114, (216) 861-5582; Dennis G. Terez (formerly with Squire, Sanders & Dempsey), Office of the Federal Public Defender, Northern District of Ohio, 750 Skylight Office Tower, 1660 West Second Street, Cleveland, OH 44113, (216) 522-4856. Counsel for Defendants: John W. Kozak, H. Michael Hartmann & Christopher T. Griffith, Leydig, Voit & Mayer, Ltd., Two Prudential Plaza, 180 N. Stetson Avenue, Suite 4900, Chicago, IL 60601-6731, (312) 616-5600.

5. *King v. Ambs*, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting). Counsel for Plaintiff-Appellant: Mark Granzotto, 225 S. Troy Street, Ste. 120, Royal Oak, MI 48067, (248) 546-4649. Counsel for Defendant-Appellee: G. Gus Morris & D. Randall Gilmer, McGraw Morris P.C., 2075 West Big Beaver Road, Ste. 750, Troy, MI 48084, (248) 502-4000.

6. *In re Welding Fume Prods. Liab. Litig.*, Case No. 1:03cv17000, 2005 U.S. Dist. LEXIS 46164 (N.D. Ohio Aug. 8, 2005). Plaintiffs' Liaison Counsel: John R. Climaco & Lisa A. Gorshe, Climaco Lefkowitz Peca Wilcox & Garofoli, Suite 1950, 55 Public Square, Cleveland, OH 44116, (216) 621-8484. Plaintiffs' Lead Counsel: John W. (Don) Barrett & Richard R. Barrett, Barrett Law Office, PA, 404 Court Square North, P.O. Box 987, Lexington, MS 39095, (800) 889-9622. Defendants' Liaison Counsel: John H. Beisner & Stephen J. Harburg, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. 20005, (202) 371-7470.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00379 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.334

7. *Avery Dennison Corp. v. Alien Tech. Corp.*, 626 F. Supp. 2d 693 (N.D. Ohio 2009). Counsel for Plaintiff: Jay R. Campbell, Joshua M. Ryland & Todd R. Tucker, Renner, Otto, Boisselle & Sklar, 19th Floor, 1621 Euclid Avenue, Cleveland, OH 44115, (216) 621-1113. Counsel for Defendant: Michael J. Garvin & Deborah A. Coleman, Hahn, Loeser & Parks – Cleveland, 2800 BP Tower, 200 Public Square, Cleveland, OH 44114, (216) 621-0150.

8. *Baran v. Med. Device Tech., Inc.*, 519 F. Supp. 2d 698 (N.D. Ohio 2007) (*Markman* opinion). Counsel for Plaintiff: Steven M. Auvil, Benesch, Friedlander, Coplan & Aronoff, 2300 BP Tower, 200 Public Square, Cleveland, OH 44114-2378, (216) 363-4686. Counsel for Defendant Medical Device Technologies, Inc.: Jude A. Fry, Fay Sharpe 5th Floor, 1228 Euclid Avenue, Cleveland, OH 44115, (216) 861-5582; R. Blake Johnston & Monica L. Thompson, DLA Piper – Chicago, 203 North LaSalle Street, Ste. 1900, Chicago, IL 60601, (312) 368-4000. Counsel for Defendants AMT Sverige, AB (*formerly known as* AMEDIC) and Ascendia AB: Douglas Q. Hahn (formerly with Ostrolenk Faber LLP), Stradling Yocca Carlson & Rauth, 660 Newport Center Drive Suite 1600, Newport Beach, CA 92660, (949) 725-4000.

9. *Biomedical Patent Mgmt. Corp. v. California Dept. of Health Servs.*, 505 F.3d 1328 (Fed. Cir. 2007). Counsel for Plaintiff/Appellant: Andrew J. Dhuey, 456 Boynton Ave., Berkeley, CA 94707, (510) 528-8200; Richard Kirk Cannon, Woods Phillips, 500 West Madison Street, Chicago, IL 6066, (312) 876-1800. Counsel for Defendant/Appellee: Susan J. King, Office of the Attorney General, Department of Justice, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, (415) 453-7642.

10. *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003). Liaison Counsel: R. Eric Kennedy, Weisman Kennedy & Berris, 1600 Midland Building, 101 Prospect Avenue, W., Cleveland, OH 44115, (216) 781-1111. Claims Administrator: James J. McMonagle, Vorys Sater Seymour & Pease, 2100 One Cleveland Center, 1375 East Ninth Street, Cleveland, OH 44114-1739, (216) 479-6158. Counsel for Plaintiffs: Stanley M. Chesley, Waite, Schneider, Bayless & Chesley, 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, OH 45202, (513) 621-0267. Defense Counsel: Harvey L. Kaplan & David W. Brooks, Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, MO 64105-2118, (816) 474-6550; Bradley D. Honnold (formerly with Shook, Hardy & Bacon), Goza & Honnold, LLC, 11150 Overbrook Road, Ste. 250, Leawood, KS 66211, (866) 767-1486.

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

The Supreme Court of the United States has granted certiorari in two cases over which I presided:

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00380 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.335

Cleveland Indians Baseball Co. v. United States, Case No. 1:96cv2240, 1999 U.S. Dist. LEXIS 1043 (N.D. Ohio Jan. 25, 1999), *aff'd,* 215 F.3d 1325 (6th Cir. 2000), *rev'd,* 532 U.S. 200 (2001)

Esparza v. Mitchell, Case No. 3:96cv7434, slip op. 133 (N.D. Ohio Oct. 13, 2000), *aff'd,* 310 F.3d 414 (6th Cir. 2002), *rev'd,* 540 U.S. 12 (2003)

See attached list of cases in which certiorari was denied.

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

Chappell v. City of Cleveland, 584 F. Supp. 2d 974 (N.D. Ohio 2008), *rev'd*, 585 F.3d 901 (6th Cir. 2009). The Court of Appeals ordered summary judgment in a case where I had found a genuine issue of material fact.

RFF Family P'ship, LP v. Wasserman, Case No. 1:07cv1617, 2008 U.S. Dist. LEXIS 16603 (N.D. Ohio March 4, 2008), *rev'd*, 316 Fed. Appx. 410 (6th Cir. 2009). The Court of Appeals reversed my order remanding a case to state court, finding that plaintiff had waived its objection to removal.

Lentz v. City of Cleveland, Case No. 04cv0669, slip op. 195 (N.D. Ohio Sept. 21, 2007), *aff'd in part, rev'd in part*, 333 Fed. Appx. 42 (6th Cir. 2009). The Court of Appeals affirmed most aspects of a jury verdict but remanded for reconsideration of the propriety of remittitur of the damages award.

Gordon v. Dadante, Case No. 1:05cv2726, 2007 U.S. Dist. LEXIS 22926 (N.D. Ohio March 29, 2007), *rev'd*, 294 Fed. Appx. 235 (6th Cir. 2008). My order concluded that a financial brokerage had waived its right to enforce an arbitration clause. The Court of Appeals reversed, holding that the brokerage's conduct was not "completely inconsistent" with asserting its right to arbitration.

Erico Int'l Corp. v. Doc's Mktg., Case No. 1:05cv2924, 2006 U.S. Dist. LEXIS 98234 (N.D. Ohio May 3, 2006), *vacated*, 516 F.3d 1350 (Fed. Cir. 2008). I preliminarily enjoined the defendant in this patent case from selling any of its products until the resolution of this action. Applying all four of the traditional preliminary injunction factors, I found that, on balance, an injunction should issue. A divided panel vacated my injunction, employing the "substantial question" test rather than the traditional four factor test. Judge Pauline Newman dissented, disagreeing with the test employed by the majority. The Federal Circuit has since adopted the four-factor approach. *See Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372 (Fed. Cir. 2009).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00381 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.336

In re Commercial Money Center, Inc. Equip. Lease Litig., Case No. 1:02cv16000, 2006 U.S. Dist. LEXIS 21392 (N.D. Ohio Apr. 20, 2006), *aff'd in part, rev'd in part*, 508 F.3d 327 (6th Cir. 2007). The Court of Appeals reversed a portion of my damages calculation, but otherwise affirmed.

Oatey Co. v. IPS Corp., Case No. 1:03cv1231, 2006 U.S. Dist. LEXIS 9060 (N.D. Ohio Mar. 8, 2006), *vacated*, 514 F.3d 1271 (Fed. Cir. 2008). The Federal Circuit affirmed my claim construction but held that I erred in excluding a single embodiment disclosed in the specifications.

Girts v. Yanai, No. 1:02cv0264, 2005 U.S. Dist. LEXIS 45611 (N.D. Ohio July 12, 2005), *rev'd*, 501 F.3d 743 (6th Cir. 2007), *cert. denied*, 129 S. Ct. 92 (U.S. 2008). A divided panel of the Court of Appeals held that I had given an inappropriate degree of deference to the state court in finding that a habeas petitioner had not been denied the effective assistance of counsel.

Lott v. Bagley, Case No. 1:04cv822, 2005 U.S. Dist. LEXIS 21227 (N.D. Ohio March 29, 2005), *rev'd*, 424 F.3d 446 (6th Cir. 2005), *cert. denied*, 547 U.S. 1092 (2006). I concluded that the petitioner implicitly waived his attorney-client and work product privileges to the extent necessary for the respondent to defend against petitioner's claim of actual innocence. A divided panel disagreed. Chief Judge Danny J. Boggs dissented, recommending that my decision be affirmed.

United States v. Montanez, Case No. 1:04cr138, slip op. 59 (N.D. Ohio Nov. 17, 2004), *vacated*, 442 F.3d 485 (6th Cir. 2006). The Court of Appeals overruled its prior binding precedent on which I relied to conclude that a particular Ohio Code violation qualified as a controlled substance offense for purposes of career offender classification under the United States Sentencing Guidelines.

Davis v. United Auto., Aerospace & Agric. Implement Workers of Am., Case No. 1:03cv1311, slip op. Doc. 19 (N.D. Ohio Dec. 31, 2003), *rev'd*, 392 F.3d 834 (6th Cir. 2004), *cert. denied*, 549 U.S. 1204 (2007). The Court of Appeals reversed my decision to remand a state-law age discrimination case, holding that the plaintiff's claims were preempted by the Labor Management Reporting and Disclosure Act ("LMRDA").

CSX Transp., Inc. v. United Transp. Union, Case No. 1:02cv2394 (N.D. Ohio Aug. 28, 2003), *rev'd*, 395 F.3d 365 (6th Cir. 2005). A divided panel of the Court of Appeals found that the dispute at issue was a "minor" dispute under the Railway Labor Act where I had found it to be a "major" dispute.

Hodge v. Hurley, Case No. 01cv1773, slip op. 25 (N.D. Ohio Jan. 14, 2003), *rev'd*, 426 F.3d 368 (6th Cir. 2005). A divided panel of the Court of Appeals held that I had given an inappropriate degree of deference to the state court in finding that a habeas petitioner had not been denied the effective assistance of counsel. Judge Eugene Siler dissented, recommending that my decision be affirmed.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00382 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.337

United States v. Saadey, Case No. 4:00cr488, slip op. 166 (N.D. Ohio May 9, 2002), *aff'd in part, rev'd in part*, 393 F.3d 669 (6th Cir. 2005). Addressing an issue of first impression, the Court of Appeals reversed the defendant's conviction under the Hobbs Act, finding that "a private citizen who is not in the process of becoming a public official may be convicted of Hobbs Act extortion under the 'color of official right' theory only if that private citizen either conspires with, or aids and abets, a public official in the act of extortion." The Court affirmed all other convictions and the defendant's sentence was unaffected.

United Church of Christ v. Gateway Econ. Dev. Corp. of Greater Cleveland, Case No. 00cv661, slip op. 40 (N.D. Ohio Mar. 22, 2001), *aff'd in part, rev'd in part, and remanded*, 383 F.3d 839 (6th Cir. 2004). The Court of Appeals affirmed most of my opinion in this First Amendment case, but reversed and remanded for further findings on the reasonableness of speech restrictions on a portion of the sidewalk ringing a sports stadium near downtown Cleveland.

Esparza v. Anderson, Case No. 3:96cv7434, slip op. 132 (N.D. Ohio Oct. 13, 2000), *aff'd sub nom. Esparza v. Mitchell*, 310 F.3d 414 (6th Cir. 2002), *rev'd*, 540 U.S. 12 (2003). I granted the petition for a writ of habeas corpus on the sentencing phase of this state death penalty case. I found that the state court had failed to adhere to state statutory law regarding how and when the death penalty can be imposed, and that this failure rendered the sentence unconstitutional. I concluded that the state court's error was a "structural" error not susceptible to "harmless error" review. In so holding, I acknowledged that my analysis depended on reconciling two arguably inconsistent Supreme Court decisions – *Neder v. United States*, 527 U.S. 1 (1999) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Court of Appeals affirmed in all respects. In a per curiam opinion, the Supreme Court reversed, holding that the sentencing error at issue was susceptible to harmless error review.

Keller v. Cent. Bank of Nig., Case No. 1:98cv1270, 2000 U.S. Dist. LEXIS 21879 (N.D. Ohio Feb. 28, 2000), *aff'd in part, vacated in part*, 277 F.3d 811 (6th Cir. 2002). The Court of Appeals held that the Foreign Sovereign Immunities Act precluded civil RICO claims because the foreign sovereigns would not be indictable for the criminal acts that are necessary predicates to those claims. The Sixth Circuit's opinion created a circuit split, *see United States v. Campa*, 529 F.3d 980, 1000–01 (11th Cir. 2008) (noting this split).

United States v. Chance, Case No. 4:99cr22, slip op. 94 (N.D. Ohio Nov. 24, 1999), *aff'd in part and rev'd in part*, 306 F.3d 356 (6th Cir. 2002). The Court of Appeals reversed for additional justification of my upward departure from the sentencing range recommended by the United States Sentencing Guidelines. On remand, I imposed the same sentence with further justification and that sentence was not appealed.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00383 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.338

Ross v. Campbell Soup Co., Case No. 98cv196, 1999 U.S. Dist. LEXIS 23288 (N.D. Ohio Aug. 26, 1999), *rev'd*, 237 F.3d 701 (6th Cir. 2001). The Court of Appeals reversed my grant of summary judgment for the defendant in an ADA case, finding a genuine issue of material fact as to whether the company "regarded" the Plaintiff as having a disability. Two other circuits later disagreed, *see Nese v. Julian Nordic Constr. Co.*, 405 F.3d 638, 642 (7th Cir. 2005) (citing *Rakity v. Dillon Companies, Inc.*, 302 F.3d 1152, 1165 (10th Cir. 2002)).

Cleveland Indians Baseball Co. v. United States, Case No. 1:96cv2240, 1999 U.S. Dist. LEXIS 1043 (N.D. Ohio Jan. 25, 1999), *aff'd*, 215 F.3d 1325 (6th Cir. 2000), *rev'd*, 532 U.S. 200 (2001). In this tax case, I granted summary judgment in favor of the plaintiff based on binding Sixth Circuit precedent, which required that "a settlement for back wages should not be allocated to the period when the employer finally pays but should be allocated to the periods when the regular wages were not paid as usual." I noted that, had I not been bound by Sixth Circuit precedent, my decision may well have been different. The Court of Appeals affirmed my application of its precedent, but the Supreme Court reversed that precedent.

NAACP v. City of Parma, Case No. 1:90cv1404, slip op. 176 (N.D. Ohio Mar. 30, 1998), *rev'd*, 263 F.3d 513 (6th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002). A divided Court of Appeals reversed my standing-based dismissal of this municipal employment discrimination action, finding that one of seven individual plaintiffs had standing.

Scott v. Anderson, 58 F. Supp. 2d 767 (N.D. Ohio 1998), *aff'd in part, rev'd in part*, 209 F.3d 854 (6th Cir. 2000), *cert. denied*, 531 U.S. 1021 (2000). In *Scott*, I granted the petition for writ of habeas corpus on the basis that the state trial court's imposition of the death penalty was unconstitutional given the trial judge's improper instruction that the jurors had to unanimously recommend a life sentence. I denied the petition on all other grounds. The Court of Appeals affirmed my treatment of all but the unanimity issue, which it found to have been procedurally defaulted.

LSJ Inv. Co. v. O.L.D., Inc., Case No. 96cv1527, slip op. 45 (N.D. Ohio Aug. 11, 1997), *aff'd in part, rev'd in part*, 167 F.3d 320 (6th Cir. 1999). The Court of Appeals affirmed my entry of default judgment in this civil RICO case on all grounds except as to one individual defendant, finding that a lack of proper service prohibited judgment by default as to that defendant.

Ohio Hosp. Ass'n v. Shalala, 978 F. Supp. 735 (N.D. Ohio 1997), *aff'd in part, rev'd in part*, 201 F.3d 418 (6th Cir. 1999), *cert. denied*, 531 U.S. 1071 (2001). The Court of Appeals reversed in part my dismissal for lack of federal question jurisdiction, finding that a different interpretation of the Medicare Act gave rise to jurisdiction on some of the claims asserted.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00384 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.339

Cehrs v. Ne. Ohio Alzheimer Research Ctr., 959 F. Supp. 441 (N.D. Ohio 1997), *aff'd in part, rev'd in part*, 155 F.3d 775 (6th Cir. 1998). The Court of Appeals reversed in part my grant of summary judgment to the defendant in this employment case, agreeing that summary judgment was appropriate on certain of plaintiff's claims, but finding that there was a genuine issue of fact as to whether the plaintiff's requested accommodation was reasonable under the ADA.

Blake v. Wright, Case No. 1:96cv2337, slip op. 19 (N.D. Ohio July 16, 1997), *aff'd in part, rev'd in part*, 179 F.3d 1003 (6th Cir. 1999), *cert. denied,* 528 U.S. 1136 (2000). The Court of Appeals affirmed in part and reversed in part my denial of qualified immunity to an ex-police chief who had used concealed equipment to eavesdrop on and had wiretapped his employees' conversations.

Weatherchem Corp. v. J.L. Clark, 937 F. Supp. 1262 (N.D. Ohio 1996), *aff'd in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998). The Federal Circuit affirmed my disposition of this patent infringement case in full but found that alternative findings I had made were unnecessary and should be vacated.

Ferro Corp. v. Garrison Indus., 927 F. Supp. 234 (N.D. Ohio 1996), *rev'd*, 142 F.3d 926 (6th Cir. 1998). The Court of Appeals reversed my order vacating an arbitrator's award, finding that a general choice of law clause was insufficient to establish that the parties intended to employ Ohio law with respect to the scope of an arbitrator's authority.

Douglas v. Argo-Tech Corp., Case No. 91cv1481, slip op. 55 (N.D. Ohio June 15, 1995), *rev'd*, 113 F.3d 67 (6th Cir. 1997). The Court of Appeals reversed my determination of whether plaintiff was an employee entitled to overtime wages under the Fair Labor Standards Act.

Avenue Grille v. Rootstown Twp., Case No. 5:94cv67, 1995 U.S. Dist. LEXIS 22132 (N.D. Ohio April 19, 1995), *vacated*, Case No. 95-3936, 1997 U.S. App. LEXIS 9689 (6th Cir. Apr. 30, 1997). The Court of Appeals ordered my post-judgment award of attorneys' fees reduced.

It has not been my practice to keep a list of opinions in which I was reversed. I generated my response to this question by reviewing the appellate history of my decisions included in the Lexis database. In addition to shepherdizing the subsequent history of my reported opinions, I searched for opinions from the Court of Appeals for the Sixth Circuit that mentioned my name as the district judge, thereby capturing reversals of certain unpublished slip opinions. Beyond this list, I do not recall any other reversals.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00385 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.340

I resolve most significant and/or dispositive motions via written opinion and order. Occasionally, in the interest of judicial efficiency in time-sensitive matters, I resolve such motions by oral rulings from the bench. I use non-document orders or short unpublished orders to address procedural issues, scheduling, discovery disputes and other administrative issues and motions. All orders are docketed when issued. Since approximately 2002, individual case dockets are available through the Court's Electronic Case Filing system. For cases that predate 2002, the dockets and copies of all orders entered in those cases are located in an off-site storage facility located in Chicago, Illinois.

It is my understanding that, in recent years, the Westlaw and Lexis databases identify and make available most substantive decisions from most federal courts. Before that, I sent opinions to be published only where I felt a significant legal issue had been addressed and decided, or where a party or interested organization requested publication.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

D'Ambrosio v. Bagley, Case No. 00cv2521, 2009 U.S. Dist. LEXIS 125483 (N.D. Ohio March 3, 2010)
Waller v. United States, Case No. 1:08cv936 2010 U.S. Dist. LEXIS 17269 (N.D. Ohio Feb. 26, 2010)
Balaban v. City of Cleveland, Case No. 1:07cv1366, 2010 U.S. Dist. LEXIS 10227 (N.D. Ohio Feb. 5, 2010)
Martinez v. Cuyahoga County Recorder's Office, Case No. 1:08cv2904, slip op. 36 (N.D. Ohio Sept. 16, 2009)
United States v. Euclid City Sch. Bd., 632 F. Supp. 2d 740 (N.D. Ohio 2009)
D'Ambrosio v. Bagley, 619 F. Supp. 2d 428 (N.D. Ohio 2009)
United States v. City of Euclid, 580 F. Supp. 2d 584 (N.D. Ohio 2008)
Project Vote v. Blackwell, 455 F. Supp. 2d 694 (N.D. Ohio 2008)
King v. Ambs, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting)
ACLU v. Brunner, Case No. 1:08cv145, slip op. 30 (N.D. Ohio Feb. 5, 2008)
Biomedical Patent Mgmt. Corp. v. State of California, Dept. of Health Servs., 505 F.3d 1328 (Fed. Cir. 2007)
United States v. Spry, 238 Fed. Appx. 142 (6th Cir. 2007)
United States v. Davis, Case No. 4:06cr386, slip op. 19 (N.D. Ohio Feb. 8, 2007)
D'Ambrosio v. Bagley, Case No. 1:00cv2521, 2006 U.S. Dist. LEXIS 12794 (N.D. Ohio Mar. 24, 2006)
Zerman v. City of Strongsville, Case No. 1:04cv2493, 2006 U.S. Dist. LEXIS 70503 (N.D. Ohio Sept. 28, 2006)
Girts v. Yanai, Case No. 1:02cv264, 2005 U.S. Dist. LEXIS 45611 (N.D. Ohio July 12, 2005), *rev'd*, 501 F.3d 743 (6th Cir. 2007), *cert. denied,* 129 S. Ct. 92 (U.S. 2008)
Parkwood Place Inc., Ltd. v. City of Brecksville, Case No. 1:03cv1744, ECF Doc. 25 (N.D. Ohio Apr. 28, 2004)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00386 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.341

Am. Family Life Ins. Co. v. Hagan, 266 F. Supp. 2d 682 (N.D. Ohio 2002)
ACLU v. Ashbrook, 211 F. Supp. 2d 873 (N.D. Ohio 2002)
Williams v. City of Cleveland, Case No. 1:01cv1999, slip op. 16 (N.D. Ohio May 15, 2002)
United Church of Christ v. Gateway Economic Dev. Corp. of Greater Cleveland, Case No. 1:00cv661, slip op. 40 (N.D. Ohio Mar. 22, 2001)
Esparza v. Anderson, Case No. 3:96cv7434, slip op. 132 (N.D. Ohio Oct. 13, 2000), *aff'd sub nom. Esparza v. Mitchell*, 310 F.3d 414 (6th Cir. 2002), *rev'd*, 540 U.S. 12 (2003)
Threesome Entertainment v. Strittmather, 4 F. Supp. 2d 710 (N.D. Ohio 1998)
United States v. Allen, 106 F.3d 695 (6th Cir. 1997)
Rose v. Village of Peninsula, 875 F. Supp. 442 (N.D. Ohio 1995)
Schwitzgebel v. City of Strongsville, 898 F. Supp. 1208 (N.D. Ohio 1995)
Valot v. Southeast Local Sch. Dist., 957 F. Supp. 991 (N.D. Ohio 1995)

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

Opinions Authored, U.S. Court of Appeals for the Federal Circuit

Biomedical Patent Mgmt. Corp. v. California Dept. of Health Servs., 505 F.3d 1328 (Fed. Cir. 2007) (dismissing lawsuit on sovereign immunity grounds and analyzing novel issue of Eleventh Amendment interpretation)
Ormco Corp. v. Align Tech., Inc., 498 F.3d 1307 (Fed. Cir. 2007) (O'Malley, J. dissenting) (emphasizing the importance of construing claim language in the patents at issue)

Opinions Authored, U.S. Court of Appeals for the Sixth Circuit

King v. Ambs, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting) (disagreeing with the majority on First Amendment grounds and emphasizing the appropriate standard of review)
Air Prods. & Controls, Inc. v. Safetech Int'l, Inc., 503 F.3d 544 (6th Cir. 2007) (reversing dismissal for lack of personal jurisdiction by finding that jurisdiction was authorized by state law and consistent with due process)
Jones v. Johanns, 264 Fed. Appx. 463 (6th Cir. 2007) (affirming summary judgment against Title VII retaliation plaintiff based on Supreme Court's *Burlington Northern* standard)
United States v. Spry, 238 Fed. Appx. 142 (6th Cir. 2007) (affirming criminal conviction and analyzing standard for delayed disclosure of *Brady* materials)
Renfro v. Ind. Mich. Power Co., 497 F.3d 573 (6th Cir. 2007) (dissenting, deferring to the District Court's careful determination that the plaintiff technical writers were not exempt from FLSA overtime regulations)
United States v. Leprich, 169 Fed. Appx. 926 (6th Cir. 2005) (affirming denial of defendant's motion to vacate order revoking his citizenship, denial of petition

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00387 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.342

for writ of habeas corpus, and BIA decision that he was removable from the U.S.)

Gale v. City of Tecumseh, 156 Fed. Appx. 801 (6th Cir. 2005) (affirming judgment on the verdict and denial of new trial against whistleblower retaliation plaintiff – finding no abuse of discretion and no judicial bias)

Stilley v. Bell, 155 Fed. Appx. 217 (6th Cir. 2005) (affirming denial of attorney's admission to Western District of Michigan Bar based on past violations of Arkansas Rules of Professional Conduct)

Diallo v. Gonzales, 140 Fed. Appx. 612 (6th Cir. 2005) (O'Malley, J., dissenting) (finding that review of final order should be granted because the State Department Country Report did not contain sufficient evidence of changed country conditions to overcome statutory presumption of future persecution)

Calvert v. Firstar Fin., Inc., 409 F.3d 286 (6th Cir. 2005) (reversing judgment against plaintiff, finding that the defendant acted arbitrarily in denying disability benefits in violation of ERISA)

Wheaton v. N. Oakland Med. Ctr., 130 Fed. Appx. 773 (6th Cir. 2005) (affirming in part, reversing in part, and remanding for new trial in an employment discrimination case)

Westfield Ins. Co. v. Appleton, 132 Fed. Appx. 567 (6th Cir. 2005) (affirming summary judgment that plaintiff insurance company was not liable under defendant's homeowners insurance policy)

Wausau Underwriters Ins. Co. v. Vulcan Dev., Inc., 323 F.3d 396 (6th Cir. 2003) (affirming summary judgment for plaintiff on breach of contract claim and dismissal of defendant's tortious interference claim)

Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Michigan Gaming Control Bd., 276 F.3d 876 (6th Cir. 2002) (O'Malley, J., dissenting) (assessing the constitutionality of a Detroit ordinance governing casino gambling licenses)

Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001) (O'Malley, J., dissenting) (finding a lack of jurisdiction and that the District Court correctly concluded that material facts relevant to qualified immunity were in dispute)

United States v. Crozier, 259 F.3d 503 (6th Cir. 2001) (O'Malley, J., concurring) (disagreeing with the majority's assessment that the defendant's request for continuance did not waive his speedy trial rights)

Ceckitti v. City of Columbus, 14 Fed. Appx. 512 (6th Cir. 2001) (affirming summary judgment that plaintiff failed to establish *prima facie* case of retaliation harassment)

Miller v. Alldata Corp., 14 Fed. Appx. 457 (6th Cir. 2001) (affirming District Court's resolution in favor of gender discrimination plaintiff)

United States v. Pettygrue, 11 Fed. Appx. 493 (6th Cir. 2001) (affirming denial of defendant's motion to withdraw plea based on lack of jurisdiction)

Curry v. Scott, 249 F.3d 493 (6th Cir. 2001)

United States v. Hicks, Case No. 99-1212, 2000 U.S. App. LEXIS 27627 (6th Cir. Oct. 26, 2000) (affirming denial of defendant's motion to withdraw plea)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00388 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.343

Stupak-Thrall v. Glickman, 226 F.3d 467 (6th Cir. 2000) (narrowing the circumstances in the Sixth Circuit where intervention as of right will be allowed)
Atchley v. RK Co., 224 F.3d 537 (6th Cir. 2000) (examining the contours of a claim of procurement of breach of contract)
United States v. Rich, Case No. 98-1032 2000 U.S. App. LEXIS 15807 (6th Cir. June 29, 2000) (affirming defendant's jury trial conviction)
UPS v. NLRB, 228 F.3d 772 (6th Cir. 2000) (affirming NLRB's decision that defendant's conduct constituted unfair labor practices)
Hughes v. Vanderbilt Univ., 215 F.3d 543 (6th Cir. 2000) (concurring, that under the narrow circumstances presented, publicity gave plaintiff constructive knowledge of cause of action to trigger statute of limitations)
United States v. Waldon, 206 F.3d 597 (6th Cir. 2000) (delineating when a mistrial must be declared if a juror views the criminal defendant wearing shackles)
United States v. Arnett, Case No. 97-6092, 1999 U.S. App. LEXIS 27415 (6th Cir. Oct. 22, 1999) (affirming conviction, but vacating sentence based on Supreme Court's *Jones v. United States* opinion)
United States v. Gantley, 172 F.3d 422 (6th Cir. 1999) (discussing, in the context of double jeopardy, when a criminal defendant's consent to a mistrial may be implied)
United States v. Sanchez-Mendoza, Case No. 97-6084, 1999 U.S. App. LEXIS 5267 (6th Cir. 1999)
United States v. Allen, 106 F.3d 695 (6th Cir. 1997) (upholding the warrantless search of a hotel room under specific circumstances)

Opinions Joined, U.S. Court of Appeals for the Federal Circuit

Monsanto Co. v. Syngenta Seeds, Inc., 503 F.3d 1352 (Fed. Cir. 2007)
Byrne v. Black & Decker Corp., 235 Fed. Appx. 741 (Fed. Cir. 2007)
Pods, Inc. v. Porta Stor, Inc., 484 F.3d 1359 (Fed. Cir. 2007)
Simmons v. SBA, 475 F.3d 1372 (Fed. Cir. 2007)
Patterson v. United States, 218 Fed. Appx. 987 (Fed. Cir. 2007)
In re Levine, 217 Fed. Appx. 957 (Fed. Cir. 2007)

Opinions Joined, U.S. Court of Appeals for the Sixth Circuit

United States v. Choate, Case No. 06-5213, 2007 U.S. App. LEXIS 22935 (6th Cir. Sept. 25, 2007)
United States v. Burns, 498 F.3d 578 (6th Cir. 2007)
Speedy Mulch LLC v. Gadd, 243 Fed. Appx. 81 (6th Cir. 2007)
Beard v. Whitmore Lake Sch. Dist., 244 Fed. Appx. 607 (6th Cir. 2007)
Ka v. Gonzales, 236 Fed. Appx. 189 (6th Cir. 2007)
Potter v. Comm'r of Soc. Sec., 223 Fed. Appx. 458 (6th Cir. 2007)
Craig v. White, 227 Fed. Appx. 480 (6th Cir. 2007)
Extendicare Health Servs. v. NLRB, 182 Fed. Appx. 412 (6th Cir. 2006)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00389 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.344

Cain v. Wells Fargo Bank, N.A., 423 F.3d 617 (6th Cir. 2005)
United States v. Namer, 149 Fed. Appx. 385 (6th Cir. 2005)
Atria v. Vanderbilt Univ., 142 Fed. Appx. 246 (6th Cir. 2005)
Lane v. Metro. Police Dep't, 134 Fed. Appx. 919 (6th Cir. 2005)
United States v. Henderson, 135 Fed. Appx. 858 (6th Cir. 2005)
United States v. Canon, 141 Fed. Appx. 398 (6th Cir. 2005)
Frazier Indus., LLC v. General Fasteners Co., 137 Fed. Appx. 723 (6th Cir. 2005)
Carroll v. United Compucred Collections, Inc., 399 F.3d 620 (6th Cir. 2005)
United States v. Holz, 118 Fed. Appx. 928 (6th Cir. 2004)
Walker v. Carlton, 114 Fed. Appx. 687 (6th Cir. 2004)
Johnson v. UPS, Case No. 03-5620, 2004 U.S. App. LEXIS 23795 (6th Cir. 2004)
Hernandez v. Ashcroft, 114 Fed. Appx. 183 (6th Cir. 2004)
United States v. Foley, 111 Fed. Appx. 840 (6th Cir. 2004)
Valentine-Johnson v. Roche, 386 F.3d 800 (6th Cir. 2004)
Ormanci v. Ashcroft, 110 Fed. Appx. 486 (6th Cir. 2004)
Amaral v. Am. Sch. of Correspondence, 107 Fed. Appx. 497 (6th Cir. 2004)
United States v. Coomes, 106 Fed. Appx. 967 (6th Cir. 2004)
Pasho v. Ashcroft, 104 Fed. Appx. 560 (6th Cir. 2004)
Okoro v. Hemingway, 104 Fed. Appx. 558 (6th Cir. 2004)
United States v. Tribble, 106 Fed. Appx. 392 (6th Cir. 2004)
Jones v. Douglas, 108 Fed. Appx. 254 (6th Cir. 2004)
United States v. Patterson, Case No. 03-6051, 2004 U.S. App. LEXIS 16343 (6th Cir. Aug. 5, 2004), *vacated*, 107 Fed. Appx. 600 (6th Cir. 2004)
Jones v. Bock, 107 Fed. Appx. 480 (6th Cir. 2004)
Banner v. City of Flint, 99 Fed. Appx. 29 (6th Cir. 2004)
United States v. Westenfelder, 70 Fed. Appx. 302 (6th Cir. 2003)
United States v. Foster, 65 Fed. Appx. 41 (6th Cir. 2003)
United States v. Lockhart, Case No. 01-6445, 2003 U.S. App. LEXIS 7424 (6th Cir. April 16, 2003)
In re Smothers, 322 F.3d 438 (6th Cir. 2003)
United States v. Willis, 59 Fed. Appx. 40 (6th Cir. 2003)
Ziemba v. Consol. Coal Co., 56 Fed. Appx. 232 (6th Cir. 2003)
United States v. Christian, 59 Fed. Appx. 44 (6th Cir. 2003)
Americorp Fin., Inc. v. Zelch, 61 Fed. Appx. 925 (6th Cir. 2003)
Sec'y of Labor v. 3RE.com, 317 F.3d 534 (6th Cir. 2003)
United States v. Gregory, 315 F.3d 637 (6th Cir. 2003)
Wash. v. McGinnis, 53 Fed. Appx. 355 (6th Cir. 2002)
Hoffman v. Jones, 53 Fed. Appx. 342 (6th Cir. 2002)
United States v. Booth, 53 Fed. Appx. 756 (6th Cir. 2002)
Rodgers v. Johnson, 56 Fed. Appx. 633 (6th Cir. 2002)
Smith v. Caruso, 53 Fed. Appx. 335 (6th Cir. 2002)
United States v. McCoy, 53 Fed. Appx. 753 (6th Cir. 2002)
United States v. Raines, 54 Fed. Appx. 598 (6th Cir. 2002)
Stephens v. DaimlerChrysler Corp., 52 Fed. Appx. 817 (6th Cir. 2002)
Denham v. McQuillan, 52 Fed. Appx. 815 (6th Cir. 2002)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00390 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.345

Turner v. United States, 53 Fed. Appx. 327 (6th Cir. 2002)
McMahon v. Rebound Care, 54 Fed. Appx. 187 (6th Cir. 2002)
Clemons v. Cook, 52 Fed. Appx. 762 (6th Cir. 2002)
Lamb v. Bumpus, 52 Fed. Appx. 740 (6th Cir. 2002)
United States v. Affini, 52 Fed. Appx. 754 (6th Cir. 2002)
Bulls v. Jones, 274 F.3d 329 (6th Cir. 2001)
Magana v. Hofbauer, 263 F.3d 542 (6th Cir. 2001)
Ken-N.K., Inc. v. Vernon Twp., 18 Fed. Appx. 319 (6th Cir. 2001)
Hampshire v. Henderson, 14 Fed. Appx. 397 (6th Cir. 2001)
United States v. Hagen, 11 Fed. Appx. 578 (6th Cir. 2001)
United States v. Underwood, 11 Fed. Appx. 581 (6th Cir. 2001)
Coal Creek Mining & Mfg. Co. v. James River Coal Serv. Co., 11 Fed. Appx. 548 (6th Cir. 2001)
Merritt v. Beth Energy Mines, Inc., 16 Fed. Appx. 300 (6th Cir. 2001)
United States v. Rankin, 11 Fed. Appx. 496 (6th Cir. 2001)
United States v. Jewell, 16 Fed. Appx. 295 (6th Cir. 2001)
Jones v. Seabold, 11 Fed. Appx. 486 (6th Cir. 2001)
Anthony v. United Methodist Publ. House, 8 Fed. Appx. 480 (6th Cir. 2001)
United States v. Buchanan, 8 Fed. Appx. 468 (6th Cir. 2001)
Turner v. Dewitt, 16 Fed. Appx. 291 (6th Cir. 2001)
Ousley v. Dir., OWCP, 8 Fed. Appx. 447 (6th Cir. 2001)
Partee v. Stegall, 8 Fed. Appx. 466 (6th Cir. 2001)
Bass v. Runyon, Case No. 98-5785, 2000 U.S. App. LEXIS 26773 (6th Cir. Oct. 17, 2000)
Thompson v. Williamson County, 219 F.3d 555 (6th Cir. 2000)
Rockwell v. Yukins, 217 F.3d 421 (6th Cir. 2000)
Duffy v. Ford Motor Co., 218 F.3d 623 (6th Cir. 2000)
Burress v. Michigan Dep't of Corr., Case No. 99-1422, 2000 U.S. App. LEXIS 14082 (6th Cir. June 6, 2000)
United States v. Adams, 214 F.3d 724 (6th Cir. 2000)
Fair v. Franklin County, Case No. 98-4237, 2000 U.S. App. LEXIS 11627 (6th Cir. May 11, 2000)
United States v. Trobaugh, Case No. 98-6277, 2000 U.S. App. LEXIS 11695 (6th Cir. May 11, 2000)
Crown Serv. Plaza Partners v. City of Rochester Hills, Case No. 98-1581, 2000 U.S. App. LEXIS 9935 (6th Cir. May 8, 2000)
United States v. Real Prop. 35555 Little Mack, Case No. 98-1069, 2000 U.S. App. LEXIS 9930 (6th Cir. May 5, 2000)
United States v. Whitman, 209 F.3d 619 (6th Cir. 2000)
Valentine v. Roff, Case No. 99-5287, 2000 U.S. App. LEXIS 4964 (6th Cir. March 20, 2000)
United States v. Anderson, Case No. 99-5241, 2000 U.S. App. LEXIS 4898 (6th Cir. March 17, 2000)
Sanders v. Numberger, No. 98-4427, 2000 U.S. App. LEXIS 4897 (6th Cir. March 17, 2000)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00391 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.346

Erdman v. Michigan, Case No. 98-2366, 2000 U.S. App. LEXIS 4894 (6th Cir. March 17, 2000)
Avery v. Nicol, Case No. 99-3423, 2000 U.S. App. LEXIS 4127 (6th Cir. March 10, 2000)
Jacobs v. Wilkinson, Case No. 99-3520, 2000 U.S. App. LEXIS 4028 (6th Cir. March 9, 2000)
Williamson v. Beeler, Case No. 98-5466, 2000 U.S. App. LEXIS 4026 (6th Cir. March 9, 2000)
Covington v. Knox County Sch. Sys., 205 F.3d 912 (6th Cir. 2000)
United States v. Miller, Case No. 98-6559, 2000 U.S. App. LEXIS 3561 (6th Cir. March 3, 2000)
United States v. Johnson, Case No. 98-2212, 2000 U.S. App. LEXIS 2475 (6th Cir. Feb 16, 2000)
Shepherd v. Dana Corp., Case No. 98-1770, 2000 U.S. App. LEXIS 2269 (6th Cir. Feb. 10, 2000)
Nowicki v. Bruff, Case No. 98-2127, 1999 U.S. App. LEXIS 34009 (6th Cir. Dec. 17, 1999)
Hale v. Schaefer, Case No. 99-1100, 1999 U.S. App. LEXIS 34065 (6th Cir. Dec. 19, 1999)
Abdullah v. Kennedy, Case No. 98-6699, 1999 U.S. App. LEXIS 34029 (6th Cir. Dec. 16, 1999)
Helfrich v. Metal Container Corp., Case No. 99-3315, 1999 U.S. App. LEXIS 34023 (6th Cir. Dec. 16, 1999)
Jones v. Schmaker, Case No. 99-1187, 1999 U.S. App. LEXIS 34454 (6th Cir. Dec. 15, 1999)
Collins v. G/H Contr. Co., Case No. 99-1260, 1999 U.S. App. LEXIS 32810 (6th Cir. Dec. 14, 1999)
Aldridge v. Cont'l Gen. Tire, Inc., Case No. 98-6658, 1999 U.S. App. LEXIS 32756 (6th Cir. Dec. 14, 1999)
Crutchfield v. Aerospace Ctr. Support, Case No. 98-6105, 1999 U.S. App. LEXIS 32765 (6th Cir. Dec. 14, 1999)
United States v. Self, Case No. 99-5333, 1999 U.S. App. LEXIS 32808 (6th Cir. Dec. 14, 1999)
Thomasville Furniture Indus. v. Elder-Beerman Stores Corp., Case No. 99-4126, 1999 U.S. App. LEXIS 32812 (6th Cir. Dec. 14, 1999)
Wright v. United States, 182 F.3d 458 (6th Cir. 1999)
Roeder v. Am. Postal Workers Union, 180 F.3d 733 (6th Cir. 1999)
Sparton Engineered Prods., Inc. v. Cable Control Techs., Inc., Case No. 97-1995, 1999 U.S. App. LEXIS 2283 (6th Cir. Feb. 10, 1999)
United States v. Thomas, 167 F.3d 299 (6th Cir. 1999)
United States v. McClellan, 164 F.3d 308 (6th Cir. 1999)
Quigley v. United States, Case No. 97-1364, 1998 U.S. App. LEXIS 33149 (6th Cir. Dec. 29, 1998)
Lombardo v. Airelect, Inc., Case No. 97-1586, 1998 U.S. App. LEXIS 33132 (6th Cir. Dec. 29, 1998)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00392 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.347

United States v. Riggins, Case No. 95-5552, 1997 U.S. App. LEXIS 2752 (6th Cir. Feb. 13, 1997)
Hunt v. Applegate, Case No. 95-1062, 1996 U.S. App. LEXIS 34348 (6th Cir. Dec. 31, 1996)
United States v. Thompson, Case No. 95-5881, 1996 U.S. App. LEXIS 22287 (6th Cir. July 30, 1996)
USACO Coal Co. v. Carbomin Energy, Case No. 95-5390, 1996 U.S. App. LEXIS 14467 (6th Cir. May 8, 1996)
Grasso Prod. v. BMO Fin., 83 F.3d 140 (6th Cir. 1996)
Leaphart v. Peterson, Case No. 95-1925, 1996 U.S. App. LEXIS 12434 (6th Cir. April 17, 1996)
United States v. Little, Case No. 95-5753, 1996 U.S. App. LEXIS 11625 (6th Cir. April 17, 1996)
Mason v. United States, Case No. 95-6122, 1996 U.S. App. LEXIS 12436 (6th Cir. April 11, 1996)
Anderson v. United States, Case No. 95-3905, 1996 U.S. App. LEXIS 12441 (6th Cir. 1996)
White v. Arch on the N. Fork, Inc., Case No. 95-4062, 1996 U.S. App. LEXIS 12440 (6th Cir. April 11, 1996)
McCown v. Harmon, Case No. 95-6081, 1996 U.S. App. LEXIS 12437 (6th Cir. April 11, 1996)
Lacey v. Michigan Dep't of Corr., Case No. 95-1625, 1996 U.S. App. LEXIS 12178 (6th Cir. April 11, 1996)
United States v. Brigance, Case No: 95-6067, 1996 U.S. App. LEXIS 12180 (6th Cir. April 10, 1996)

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

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00393 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.348

I assess the propriety of recusal in all cases by reference to governing statutory and ethical rules or canons, including advisory opinions relating thereto. Where I have been unclear as to the obligations imposed by the governing criteria, I have sought guidance from the General Counsel of the Administrative Office of the United States Courts and/or the United States Judicial Conference Committee on Codes of Conduct for United States Judges.

Our Court's automatic recusal system assists judges in their effort to comply with these governing standards. Under that system, the Clerk's Office and my individual courtroom deputy maintain lists of persons and entities whose involvement in a case triggers my recusal without action on my part. The lists, which I update regularly, include entities in which my spouse and I have a financial interest and attorneys with whom I have a familial or other disqualifying personal relationship. Earlier in my service as a judge, it also included my former law firm.

Criminal defendants occasionally have requested via a letter addressed directly to the Court that I recuse myself. I read these letters and consider the asserted bases for recusal. I have never, however, recused myself from a case based on this sort of request from a criminal defendant. I have not retained any list of such cases.

In addition, based on my recollection and search of my files, I have identified the following cases in which I recused or ruled on a motion or request to recuse:

Hines v. Chandra, 06cv2233 (2009): Plaintiff *pro se* questioned my fairness and asserted that I was biased against him after I issued an order granting summary judgment against him in which I noted that he had been disbarred. I denied his recusal motion based on the applicable legal standard.

United States v. Zaidi, 5:08cr187 (N.D. Ohio 2009): The *pro se* Defendant questioned my fairness and accused me of conspiring against him with the Government. Although I ultimately transferred the case to another Judge for trial for administrative reasons, I found the Defendant's allegations to be baseless and did not recuse myself.

ACLU v. Ashbrook, 211 F. Supp. 2d 873 (N.D. Ohio 2008): A Defendant serving as a state court judge filed a motion to disqualify based on the contention that, in the process of inquiring about scheduling issues, my then-law clerk had an *ex parte* conversation with a party. I denied the motion and retained the case, finding that the communications at issue related to purely procedural matters. Later, the defendant judge sent me a letter discussing his motives. Thereafter, when a renewed action was filed against the same parties, I recused myself *sua sponte* because of the out-of-court communication initiated by the state court judge. *See ACLU v. DeWeese*, Case No. 08cv2372 (N.D. Ohio 2008).

Miller v. Simone, 03cv2357, slip op. 129 (Oct. 30, 2006): In a written opinion, I granted defendant's motion to recuse on the grounds that she had retained counsel from Jones Day, where my brother is a partner.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00394 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.349

United States v. Goist, 4:03cv1048 (2005): I recused myself *sua sponte* in a civil suit when the plaintiff had been a criminal defendant who had appeared before me, and his civil suit attempted to place a lien on my property and asserted claims against the prosecutor in his criminal case.

DirectTV, Inc. v. Katakos, 03cv2403 (2003): I recused myself *sua sponte* because a relative of one of my staff members was a named defendant in a related case.

United States v. Millhouse, 96cr294 (1998): I recused myself post-verdict after receiving a credible threat to my physical well-being from the Defendant. Another judicial officer handled the sentencing proceeding.

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

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

I have not held public office other than judicial office. I have not had unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I provided a limited amount of volunteer policy support to Lee Fisher's reelection campaign for Attorney General of Ohio in 1994.

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

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

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

From 1982 to 1983 I served as a law clerk to the Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00395 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.350

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

I never practiced alone.

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

1982
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Summer Associate

1983-1984
Jones Day (Formerly Jones, Day, Reavis & Pogue)
901 Lakeside Ave.
Cleveland, Ohio 44114
Associate

1985-1991
Porter, Wright, Morris & Arthur, LLP
Huntington Building
925 Euclid Ave., 17th Floor
Cleveland, Ohio 44115
Partner (1991)
Associate (1985-1991)

1991-1994
Office of the Ohio Attorney General
30 East Broad St., 17th Floor
Columbus, Ohio 43266-0410
First Assistant Attorney General and Chief of Staff (1992-1994)
Chief Counsel (1991-1992)

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

Other than my role in facilitating alternative paths toward resolution of matters that come before me as a district court judge, I cannot recall serving as a mediator or arbitrator.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00396 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.351

b. Describe:

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

From 1982 to 1983, I was a judicial law clerk, during which time I conducted legal research and drafted materials for Judge Jones.

From 1983 to 1991, I was a civil litigator in private practice.

From 1991 to 1993, I was Chief Counsel to the Ohio Attorney General. I personally litigated major cases on federal and state constitutional questions in both federal and state court, at the trial and appellate levels. I supervised all matters litigated by the 350 lawyers in the Office, including on questions relating to sovereign immunity, reapportionment, election law, environmental law, administrative law, criminal law, eminent domain, the state's constitutional spending and taxing authority, and state court jurisdictional issues, among others.

From 1993 to 1994, I was First Assistant and Chief of Staff to the Ohio Attorney General. I was responsible for oversight of all aspects of the office, including the legal, law enforcement, legislative, communications, and collections operations and the human resources and administrative aspects of the office, which employed in excess of 1,100 persons. I spent a significant amount of time in this role spearheading law enforcement-related initiatives and concentrating on improving the management and professionalism of the office.

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

While in private practice (1983-1991), my typical clients were large corporations (including several Fortune 500 companies) as well as medium and small businesses. My early work was primarily in complex corporate litigation and particularly intellectual property litigation. For several years, I spent a substantial amount of my time as special counsel to the State of Ohio in connection with the Savings and Loans (S&L) Collapse. After resolution of the S&L cases, in addition to my work for large corporations, I also began representing small and mid-sized businesses, specifically in connection with shareholder disputes and cases involving trade secrets, trademarks, restrictive covenants, and covenants not to compete. I also did some First Amendment and products liability litigation. Beginning in 1990, I spent most of my time on a complex securities fraud case. My last major case in private practice was as co-counsel representing Lee Fisher in an election contest filed in connection with his 1990 election to Attorney General of the State of Ohio.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00397 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.352

While serving in the Office of the Ohio Attorney General, my clients were the State of Ohio and its agencies and officers, including the Governor and other elected public officials.

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

During my time as a practicing attorney, I tried a number of cases and otherwise appeared in court occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 35%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I estimate that I was counsel in 15-20 cases tried to verdict or judgment. In approximately six to eight of those cases I functioned as either sole or lead counsel, and in the others I participated either as co-counsel or associate counsel.

i. What percentage of these trials were:
   1. jury: 15%
   2. non-jury: 85%

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

During my tenure at the Ohio Attorney General's Office, I participated in and supervised the petition for certiorari filed in the Supreme Court of the United States in connection with Ohio's Ethnic Intimidation/Penalty Enhancement Law. I also helped to draft the amicus brief filed on behalf of all states in support of the State of Wisconsin's successful effort to have its ethnic intimidation statute declared constitutional. While in private practice, I participated in drafting oppositions to petitions for certiorari in a handful of cases.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00398 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.353

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

    a. the date of representation;

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

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

1. *In re Election of November 6, 1990 for the Office of Attorney General of Ohio*, 62 Ohio St. 3d 1 (1991).

Paul E. Pfeiffer, Attorney General Lee Fisher's opponent in the 1990 election for the office of the Attorney General in the State of Ohio, challenged the election of Attorney General Fisher, claiming that alleged irregularities existed in the election process that rendered the election defective.

Because election contests in Ohio are direct actions before the Supreme Court of Ohio, the matter was litigated in a unique fashion. The parties submitted all factual evidence to the court through trial depositions, affidavits, exhibits and/or stipulations of fact. The depositions of more than forty witnesses were taken and submitted to the court and those depositions generated more than 150 exhibits for the court's consideration. A lengthy brief synthesized and summarized this evidence for the court, and delineated how those facts, as applied to controlling law, supported Lee Fisher's election. The election contest commenced during the last week of December 1990 and the Supreme Court heard oral argument on all of the parties' submissions on February 20, 1990. This compressed schedule necessitated expedited and sometimes around the clock trial preparation.

In this matter, I sat second chair to Richard M. Markus, representing Attorney General Lee Fisher. I conducted all of the research and drafted the briefs. I also assembled the factual record for submission to the court and played a significant role in devising and implementing litigation strategy decisions. I participated in outlining and preparing the argument to the Ohio Supreme Court, which Richard Markus made. The Court ruled in favor of Attorney General Fisher.

Co-counsel: Judge Richard M. Markus, 3903 North Valley Drive, Fairview Park, OH 44126, (440) 356-2728; Steven Kaufman, Thompson Hine LLP, 3900 Key Center, 127 Public Square, Cleveland OH 44114, (216) 566-5528. Opposing counsel: William C. Wilkinson, Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus OH 43215, (614) 469-3266

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00399 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.354

2. *Gordon Square Restaurant & Lounge, Inc. v. Sergeant Roger Dennerll, et al.*, Case No. C86-1883, N.D. Ohio, August, 1990 (Judge Alvin I. Krenzler)

I represented plaintiffs *pro bono* in their action against two police officers and the City of Cleveland, under 42 U.S.C. § 1983. A jury heard the evidence for approximately ten days in the Honorable Alvin I. Krenzler's courtroom.

The trial involved allegations that two City of Cleveland vice officers who arrested the two plaintiffs for prostitution and testified against them in a criminal trial on those charges, had (1) arrested plaintiffs without probable cause to do so; (2) engaged in excessive use of force; (3) failed to provide sufficient medical attention to the plaintiffs when needed; and (4) intentionally inflicted emotional distress upon the plaintiffs by perjuring themselves in the course of the plaintiffs' criminal trial. The jury returned a verdict on all counts against the two police officers, crediting my clients' claims and finding the defendants liable under all theories of liability. Prior to subsequent trial phases on municipal liability and on damages, the case settled on terms favorable to the plaintiffs. I served as the lead lawyer for plaintiffs. An associate from my former law firm assisted.

Co-counsel: Robert Mann, Last known phone number: (216) 766-5081. Opposing counsel: Kathleen Martin, Last known phone number: (216) 664-2800

3. *Newman v. Voinovich*, Case No. C2-92-248, S.D. Ohio (Judge George Smith); Appeal Case No. CA92-3345, United States Court of Appeals for the Sixth Circuit.

As primary counsel, I represented then-Governor George V. Voinovich in connection with plaintiff's challenge to the constitutionality of Governor Voinovich's system for appointing persons to fill in-term judicial vacancies in the State of Ohio. The plaintiff claimed that the trilogy of cases issued by the Supreme Court of the United States addressing the propriety of patronage hiring and discharges (*Elrod, Branti, and Rutan*) mandated the conclusion that the Governor's appointment practices violated the plaintiff's and other would-be candidates' First Amendment rights of expression and association. Plaintiff also asserted violations of the Voting Rights Act.

The court ordered expedited discovery, followed by a hearing, on plaintiff's request for a preliminary injunction. The plaintiff sought to prohibit the Governor from making further judicial appointments in the State of Ohio unless and until the Governor instituted a bipartisan screening process for purposes of choosing judicial candidates.

Following the hearing, which included testimony of numerous fact and expert witnesses, the court entered judgment in favor of Governor Voinovich and dismissed plaintiff's complaint on the merits *sua sponte*. Plaintiff appealed. I argued the appeal in the Sixth Circuit, again representing Governor Voinovich as the appellee. The Court of Appeals ruled in the Governor's favor and the Supreme Court of the United States denied certiorari.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00400 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.355

Co-counsel: Patrick A. Devine, Schottenstein, Zox & Dunn, 250 West Street, Columbus, OH 43215, (614) 462-2238. Opposing counsel: Bruce Inglis Petrie, 2787 Walsh Rd., Cincinnati, OH 45208-3428.

4. *Preterm Cleveland v. Voinovich,* Common Pleas Case No. 92CV-01-528 (Judge Guy Reese); Ohio Tenth District Court of Appeals Case No. 92-AP 791

In this matter, I represented defendants then-Governor George V. Voinovich, the Ohio Department of Health, and then-Attorney General Lee Fisher. Plaintiffs challenged the constitutionality of House Bill 108, the Ohio Law requiring physician-driven informed consent and a 24-hour waiting period prior to the performance of an abortion in the State of Ohio. The trial court conducted a hearing on plaintiffs' request for a preliminary injunction and received evidence regarding plaintiffs' claim that House Bill 108 violated the plaintiff's privacy and First Amendment rights under the United States Constitution. In response, the State argued that the statutes were constitutional under the standard adopted by the Third Circuit in *Planned Parenthood v. Casey*, 947 F.2d 682 (3d Cir. 1991). The court consolidated plaintiffs' federal claims with the trial on the merits of plaintiffs' state law claims. After trial, the trial court declared House Bill 108 unconstitutional under both the United States and Ohio Constitutions.

The state appealed the matter to the Tenth District Court of Appeals and in October 1992, I argued the appeal on behalf of the State. The Tenth District reversed the trial court and ruled in the State's favor, relying on the undue burden standard, which had then been adopted by the Supreme Court of the United States in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The Supreme Court of Ohio thereafter refused to hear the matter.

Co-counsel: Andrew I. Sutter, Assistant General Counsel, JP Morgan Chase & Co., 1111 Polaris Parkway, Columbus, OH 43240, (614) 248-6478; Andrew Steven Bergman, Deputy Dir. for Legal Affairs, State of Ohio, Ohio EPA, Lazarus Government Center, 50 W Town St., Columbus, OH 43215, (614) 644-2782. Opposing Counsel: Kevin F. O'Neill, Associate Professor of Law, Cleveland - Marshall College of Law, Cleveland State University, 1801 Euclid Avenue, Cleveland, OH 44115-2223, (216) 687-5282.

5. *State ex rel, Cincinnati Post v. the Second & Sixth District Courts of Appeal*, Case No. 91-2552, decided December 14, 1992, 65 Ohio St. 3d 378 (before the Ohio Supreme Court)

This was a direct action in the Supreme Court of Ohio seeking a writ of mandamus against the Second and Sixth District Courts of Appeals. The *Cincinnati Post* sought the production of records relating to the Courts' consideration of minors' requests to bypass the statutory obligation to inform their parents or guardians prior to obtaining an abortion in the State of Ohio. I was lead counsel representing the Courts of Appeals. I argued to the Supreme Court that the importance of protecting the anonymity of minors involved in the judicial bypass proceedings outweighed petitioner's claimed right to the documents.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00401 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.356

The Supreme Court of Ohio ruled in favor of the newspaper, concluding that the State's interest in protecting the anonymity of the minor was not sufficient to override the First Amendment interest in free access to the Courts. The Supreme Court further found that the State should attempt to protect the anonymity of the minor through more narrowly drawn means.

Co-counsel: Andrew I. Sutter, Assistant General Counsel, JP Morgan Chase & Co., 1111 Polaris Parkway, Columbus, OH 43240, (614) 248-6478. Opposing counsel: David L. Marburger, Partner, Baker & Hostetler LLP, 3200 National City Center, Cleveland, OH 44114, (216) 621-0200.

6. *Diamond Co. v. Gentry Acquistion Corp.,* Case No. 137875, Cuy. Cty. Common Pleas, 48 Ohio Misc. 2d 1, 531 N.E.2d 777 (1988) (Judge James J. McMonagle)

In this case, I was the lead lawyer defending Gentry Clothiers. Diamonds Men's Stores claimed that Gentry engaged in false advertising by asserting that it sold top quality clothing at "about half" the price of regular-priced men's retailers. The court conducted a several day trial on plaintiff's request for a preliminary injunction.

After the preliminary injunction hearing, the court found that the plaintiff: (1) was not entitled to a preliminary injunction; and (2) had very little likelihood of ever succeeding on the merits of its underlying claims against Gentry. Judge James J. McMonagle issued a written opinion delineating his findings. Sometime following the court's ruling on the preliminary injunction, the parties settled their dispute.

Co-counsel: Hugh E. McKay, Partner, Porter, Wright, Morris & Arthur, LLP, 925 Euclid Ave., Suite 1700, Cleveland, OH 44115, (216) 443-2580. Opposing counsel: Jeffrey H. Friedman, Partner, Friedman, Domiano & Smith Co., L.P.A., 55 Public Square, Suite 1055, Cleveland, OH 44113, (216) 586-5520.

7. *Pumper v. Kawasaki,* Case No. 75730, Cuy. Cty. Common Pleas (Judge George McMonagle)

In this products liability case, I sat second chair in the defense of a manufacturer. Plaintiff claimed that a three-wheeled all-terrain vehicle produced by Kawasaki was defectively and/or negligently designed, that it was negligently manufactured, and that Kawasaki had failed properly to warn plaintiff regarding the use of the vehicle. In April 1988, following approximately eight days of trial, the jury returned a verdict in favor of the defendant Kawasaki.

Co-Counsel: Terrance M. Miller, Huntington Center, 41 South High Street, Columbus, OH 43215-6194, (614) 227-2142. Opposing Counsel: Andrew P. Krembs, Owner, Andrew P. Krembs & Associates Co. LPA, 55 Public Square, Suite 1700, Cleveland, OH 44113, (216) 875-7500.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00402 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.357

8. *Harris v. Arthur Andersen & Co.*, Ohio Ct. of Claims

This action against Arthur Andersen & Co. was one of the most substantial aspects of the *Home State* litigation in which my firm, Porter, Wright, Morris & Arthur, acted as special counsel to the Superintendent of Savings & Loans and the State of Ohio. The State alleged, in the name of the Superintendent of Banks and on behalf of the depositors and creditors of Home State Savings Bank, that Arthur Andersen negligently discharged its professional functions as the auditors of Home State Savings Bank, thus contributing to its collapse. Specifically, the State alleged that Arthur Andersen failed to address the dangers inherent in the extensive reverse repurchase transactions in which Home State had engaged with ESM Securities, and had given Home State the equivalent of an auditing clean bill of health, despite its precarious financial position and its failure to maintain a sufficient net worth to cover its potential losses.

The matter went to trial in the Ohio Court of Claims before a visiting judge. Since the matter presented some questions triable to a jury and some that were not, the court began jury trial in February 1988. Following six full weeks of trial, the plaintiff completed the submission of its case in chief to the jury. Before the defendant began its case, the parties settled, and the trial ended without deliberation by the jury. Under the settlement, Arthur Andersen's insurers paid a significant sum of money to the State.

I was one of six lawyers who participated in the trial in the Court of Claims.

Lead co-counsel: Robert W. Trafford, Huntington Center, 41 South High Street, Columbus, OH 43215-6194, (614) 227-2149. Opposing counsel: James R. Adams, Frost Brown Todd LLC, 2500 PNC Center, 201 East 5th Street, Cincinnati, OH 45202, (513) 651-6947.

9. *Celebrezze v. Dayton Daily News*, Case No. 88-127, Cuy. Cty. Common Pleas; on appeal, 41 Ohio App. 3d 343 (Judge Terrence O'Donnell)

In this matter, I was one of three counsel of record representing the *Dayton Daily News* in a defamation action filed by former Supreme Court of Ohio Justice James J. Celebrezze against the newspaper and its editorial cartoonist. On the opening day of trial, the court entered judgment in favor of the newspaper and cartoonist. Plaintiff appealed the matter to the Eighth District Court of Appeals in Cuyahoga County and, again, the newspaper prevailed. This was the first case in Ohio in which a court declared that an editorial cartoon, as a matter of law, constitutes an expression of opinion protected by the First Amendment and the Ohio Constitution.

Lead co-counsel: James Pohlman (Deceased). Opposing counsel: Don C. Iler, Iler & Iler Co., LPA, 101 W. Prospect Ave., 1650 Midland Building, Cleveland, OH 44115, (216) 696-5700.

10. *The Ivy Med. Group, Inc. v. Hummer, M.D.*, Case No. 141572, Cuy. Cty. Common Pleas (Judge James J. McMonagle)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00403 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.388

In this matter, I served as lead counsel to entrepreneurs who pioneered the provision of emergency care services through urgent care centers in the State of Ohio. Their business initially was successful and highly profitable. The entrepreneurs sold shares to a large out-of-state interest that, in partnership with a number of other investors, gained majority control of the shares in the corporation. I successfully defended against a claim brought by the corporation that sought a temporary restraining order and preliminary and permanent injunctions against one of the entrepreneurs who was also head of the medical staff for the urgent care centers. After the court refused to enter injunctive relief against my client, I instituted an action on his behalf (and that of the second entrepreneur) in which we asserted that the majority shareholders of the corporation had engaged in an effort to "squeeze out" my clients, and had violated the securities laws and the corporation's own shareholder agreements. After extensive discovery and on the eve of the scheduled hearing on my clients' request for the appointment of a receiver and the dissolution of the corporation, the matter settled, resulting in a buy out of the entrepreneurs' shares.

Co-counsel: William R. Weir, 925 Euclid Ave., Suite 1700, Cleveland, OH 44115-1483, (216) 443-2540. Opposing counsel: Ira Kaplan, Benesch Friedland Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, OH 44114-2378, (216) 363-4567.

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

During my time in private practice, I was a full-time litigator. In addition to my courtroom work, I was involved in several substantial representations that did not proceed to trial during my involvement with them. For example, during my first several years in practice, I worked on a number of patent and intellectual property disputes relating to oil additives. From 1985 to 1988, most of my practice related to the Savings and Loan collapse, in which I was part of a team representing the State of Ohio and was engaged in constant motion practice and other pre-trial proceedings on the State's behalf in various courts of Ohio and of other states. In 1990, I spent a substantial portion of my year representing a rental car company in a civil Racketeer Influenced and Corrupt Organizations Act (RICO) case in which I was one of two lead attorneys and won a substantial victory freezing defendants' assets.

While Chief Counsel and later First Assistant Attorney of Ohio, I supervised all litigation in the Office and counseled senior government officers on legal questions. I coordinated state-wide law enforcement initiatives, such as boarding up of drug houses, I helped coordinate legislative efforts to strengthen the authority of the Attorney General's Office in areas such as Medicaid fraud and environmental enforcement, and had supervisory

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00404 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.359

authority over the Ohio Bureau of Criminal Identification and Investigation and the Ohio Police Officers Training Academy. I directly managed special legal situations, such as representations for the reapportionment and congressional redistricting in the State of Ohio in 1991-92. In that matter, special counsel represented the majority and minority members of the Reapportionment Board, but both groups of special counsel reported to me (necessitating a unique and delicate conflicts treatment). In addition, I personally represented the interests of the State of Ohio in the reapportionment litigation filed in the United States District Court for the Southern District of Ohio and the Supreme Court of Ohio, and I argued on behalf of the State in the United States Court of Appeals for the Sixth Circuit.

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

"Handling Patent, Copyright, and Trademark Cases" (2003, 2005 & 2007-Present)—Berkeley Center for Law and Technology. I am a faculty member at an annual three-day intensive program to educate Federal Judges regarding the handling of patent, copyright, and trademark matters including as to substantive, procedural, and case management issues in all three fields.

Patent Litigation (2002, 2003, 2004 & 2006)—Case Western Reserve University School of Law ("CWRU"). Three credit hour course addressing matters relating to case management, jurisdiction, procedure, claim construction, trial tactics, client management, counsel's role in the litigation process, the use of technology in patent cases, and key substantive areas of patent law such as obviousness, infringement, damages, and *Daubert*.

From 1998 to 2006, I have been a periodic *pro bono* visiting lecturer at CWRU, conducting presentations in advanced criminal procedure (including one for Prof. Paul Giannelli's class in roughly February of 2006), trial tactics, and the use of technology in the courtroom.

ALI-ABA Course of Study: In 1999, 2002 to 2006, and 2008, I served as a faculty member for "Trial of a Patent Case," an annual, multi-day program to train lawyers on best practices for the handling of patent matters. Judicial officers, practitioners, in-house counsel, and experts present, preside over, and critique a mock patent trial, and give presentations on substance, procedure and tactics.

Research, Advocacy, and Writing (1981-1982)—CWRU.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00405 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.360

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements.

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

While I may consider teaching again at some point in the future, I would not do so soon after taking the appellate bench. I would hope, however, to continue participating in the development of the law through lectures, law-related advisory boards and panels, and similar activities undertaken without compensation. I would ensure strict adherence to all ethical rules in any such activity. I have no other plans, nor any commitments or agreements, to pursue outside employment.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

My spouse is a partner at Covington & Burling and my brother is a partner at Jones Day. Both firms have practices that may cause them to appear before the Federal Circuit. I always have recused myself from all matters involving either firm and will continue to do so, if confirmed to a new court. I also will recuse myself with respect to the clients of either of these firms to the extent appropriate under all governing statutes, canons, and rules of ethics or with respect to entities in which I or my spouse have a financial interest that would require recusal (though I do not anticipate this would occur on other than rare occasions). I know of no other potential conflicts of interest.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00406 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.361

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

In my present position and if confirmed as a Circuit Judge, I will continue to adhere to all statutory and ethical obligations regarding recusal and will disclose any circumstances where any conflict or potential appearance of conflict arises, even where recusal is not mandated. I will follow all guidelines provided for the judiciary in all relevant statutes, canons, or advisory opinions. When necessary, I will also seek guidance from the General Counsel of the Administrative Office of United States Courts and the Committee on Codes of Conduct for United States Judges.

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

Prior to taking the bench in 1994, I was actively engaged in *pro bono* representations:

Gordon Square Restaurant & Lounge, Inc. v. Sergeant Roger Dennerll, Case No. C86-1883, N.D. Ohio, August, 1990 (Judge Alvin I. Krenzler): I devoted significant amounts of time over a two-year period to the representation of the plaintiffs in this action. The action involved two women falsely accused of prostitution and solicitation, who had been physically abused by certain police officers in the process. These women had no money to sue the City and no access to lawyers. My firm allowed me, with the help of another associate in the firm, to conduct extensive discovery in this case and spend a full two weeks trying the matter in Federal District Court on a *pro bono* basis.

I was appointed both by the Southern District of New York (as an intern during law school) and by the Court of Appeals for the Sixth Circuit (soon after completing my clerkship) to act as counsel for indigent defendants and appellants, respectively. In connection with the Sixth Circuit matter, I received compensation at the statutory rate and, in fact, was given a compensation enhancement based on the amount of work performed in the matter, but was paid at a rate far below my normal private practice rates. Again, these efforts were made possible by the willingness of the law firms with which I was affiliated to allow me to participate in these court-sponsored programs.

Assistant Attorney General Patrick Devine and I drafted an amicus brief for the State of Ohio to file in support of the State of Massachusetts' defense of its IOLTA Program (the program by which lawyers are required to place certain funds into a pooled trust so that the interest generated may be used to help provided civil legal services to the indigent). We were successful in getting 22 other states to join our effort in support of Massachusetts, even though we filed the amicus brief at the Court of Appeals level, which is unusual for a state to do.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00407 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.362

In addition, prior to taking the bench I was involved in a number of charitable activities in the legal community:

I was a founding Board Member of the Ohio Legal Assistance Foundation, whose mission is to help provide funding for and determine the appropriate distribution of funds to Ohio's Legal Aid community. I was on the Committee appointed by Ohio Chief Justice Thomas Moyer to create (via legislation and otherwise), fund and staff this Foundation.

I conceived and spearheaded "Project A.G.", or "Project Above Ground," in which employees of the Attorney General's Office worked on their own time to raise money for victims of the Mid-West floods in 1993. We challenged all other State Attorney General offices to follow our lead and donated all funds to the Red Cross.

I supervised and participated yearly in another Attorney General Office project – "Project Wish List" – which provides goods and funds to domestic violence shelters across the State of Ohio.

Since taking the bench, my ability to continue in *pro bono* and charitable activities has been limited by the ethical restrictions placed upon judicial officers. As a judicial officer, I have attempted to encourage *pro bono* legal activity in a number of ways. I am a member of the court committee that proposed use of court admission fees to repay volunteer lawyers for the costs of expenses incurred when accepting *pro bono* assignments in civil cases. The system proposed by the Committee has since been adopted by the full court and is used regularly. I also have spoken to law firms and bar association gatherings about this new program and the importance of accepting *pro bono* civil appointments generally.

I have committed a substantial amount of time to educating students and lawyers on best practices in the litigation process. Among other things, I have been an active member of the John M. Manos Inn of Court and was its president for over three years. The Inn's purpose, in addition to fostering professionalism and ethics in the profession, is to encourage established lawyers to mentor young lawyers who have less access to older practitioners (i.e., who do not have the luxury of a large law firm practice).

I regularly teach and lecture at law schools for little or no salary, preside over moot court competitions, welcome new students, sponsor externships and often welcome students of all ages and from all communities to my courtroom in an effort to foster an understanding of the legal system. I regularly agree to speak at functions and programs designed to foster a better understanding of the law and the various players in the judicial system, always with no remuneration.

I was among the first judges in the country to spearhead the addition of technology to federal courtrooms, in large measure to level the playing field with respect to the use of persuasive technology between the government and indigent defendants and between the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00408 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.363

well-heeled and the less financially fortunate. I organized a free on-going CLE program to familiarize the bar with the new technology.

Finally, I have volunteered many hours to my local community and schools. Among other things, I have served as a coach in the Chagrin Falls Community Soccer League and as a coach for the Chagrin Falls Middle School girl's lacrosse team.

26. **Selection Process**:

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

There is no selection commission for the Federal Circuit.

Early in 2009, I spoke with Senator Sherrod Brown and with staff members of Senator George Voinovich about my interest in a court appointment in the Washington, D.C., area, where my husband resides and works. I contacted the White House Counsel's Office in writing in February 2009 to request consideration for any future vacancy on the United States Court of Appeals for the Federal Circuit. In May 2009, I met with attorneys from the White House Counsel's office to reiterate my interest in the Federal Circuit. In September 2009, the Honorable Alvin Schall took senior status, creating an opening on the Court of Appeals for the Federal Circuit. I interviewed with White House Counsel Gregory Craig on October 12, 2009. Since January 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed again with attorneys from the White House Counsel's Office and the Department of Justice on February 12, 2010. On March 10, 2010, the President submitted my nomination to the Senate.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00409 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.364

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

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
O'Malley, Kathleen M	Federal Circuit	3/9/2010

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
Circuit Judge - Nominee	_x__ Nomination, Date _____3/10/10__ ___ Initial ___ Annual ___ Final	Jan 1, 2009 - Feb. 25, 2010

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.
801 W. Superior Avenue, Rm 16A Cleveland, OH 44113	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	Chair	Judges' Committee, Federal Circuit Bar Association
2	Member	U.S. Judicial Conference Committee on Space & Facilities
3	Member	Sixth Circuit Judicial Conference Space & Facilities Committee

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.)*

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
[x]	**NONE** (No reportable non-investment income.)		
1			$
			$
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)

	DATE	SOURCE AND TYPE
[ ]	**NONE** (No reportable non-investment income.)	
1	2009	Covington & Burling
2		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
O'Malley, Kathleen	3/9/2010

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
O'Malley, Kathleen	3/9/2010

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)	D. 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	CITIBANK	D	Int.	O	T					
2	CASTLE HARLAN AFFILIATES IV-A, LLP LLP II	A	Int. & Div.	K	W					
3	MID-ATLANTIC FUND OF FUNDS II LP	A	Div. & Int.	K	W					
4	THE DINER CLUB I, LLC	A	Int.	K	W					
5	**BROKERAGE ACCOUNT 1**									
6	US GOV'T MONEY MARKET FUND	A	Int.	J	T					
7	**BROKERAGE ACCOUNT 2**									
8	US GOV'T MONEY MARKET FUNDRBC RESERVE CLASS	A	Int.	J	T					
9	VANGUARD TAX EXEMPT MM	A	Int.	K	T					
10	STRIPS - TINT 5/15/10	A	Int.	J	T					
11	STRIPS - TIND 8/15/10	A	Int.	J	T					
12	**BROKERAGE ACCOUNT 3**									
13	VANGUARD PRIME MM	A	Int.	J	T					
14	STRIPS - TINT 8/15/10	A	Int.	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
O'Malley, Kathleen	3/9/2010

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)									
15	**IRA #1**									
16	US GOV'T MONEY MARKET FUND	B	Int.	M	T					
17	**CHARLES SCHWAB 401(K) # 1**									
18	VANGUARD INSTITUTIONAL INDEX	D	Div.	M	T					
19	RANIER SMALL/MID CAP EQUITY	B	Div.	K	T					
20	SCHWAB MNG RET TRUST 2010 CL II	D	Div.	M	T					
21	SCHWAB MNG RET TRUST 2020 CL II	B	Div.	K	T					
22	SCHWAB MNG RET TRUST 2030 CL II	B	Div.	K	T					
23	VANGUARD WELLINGTON ADM	C	Div.	L	T					
24	COVINGTON PENSION PLAN CASH BALANCE ACCOUNT	E	Int.	O	T					
25	COVINGTON & BURLING LLP	D	Int.	N	W					
26										
27										
28										
29										

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
	O'Malley, Kathleen	3/9/2010

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

I. Positions

4. Chair U.S. District Court, Northern District of Ohio, Space & Facilities Committee

5. Member National Academies, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence

6. Member Advisory Board, University of Maryland, Intellectual Property Advisory Board

7. Member Dean's Advisory Committee, Case Law School

8. Member Master Bencher, John M. Manos Inn of Court (formerly Anthony J. Celebrezze Inn of Court)

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 Kathleen M. O'Malley Date 3/9/10

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		151	948	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	302	444	Notes payable to relatives			
Unlisted securities--add schedule		128	319	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	1	730	443
Real estate owned-add schedule	2	849	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		198	000	Loan from Thrift Savings Plan		1	797
Cash value-life insurance				Estimated Income Taxes on the			
Other assets itemize:				Differences between the estimated			
Covington & Burling Capital Account	1	390	288	Current values of assets and their tax bases		676	694
Covington & Burling Cash Balance Plan		761	174	Total liabilities	2	408	934
Thrift Savings Plan		107	528	Net Worth	4	479	767
Investments in Limited Partnership		128	319	Total liabilities and net worth	6	888	701
Total Assets	6	888	701				
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							

66720.370

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities	
RBC Advisor Services, Account 1	$ 9,998
RBC Advisor Services, Account 2	20,419
RBC Advisor Services, Account 3	224,784
RBC Advisor Services, Account 4	224,209
RBC Advisor Services, (IRA) Account 5	245,556
Covington & Burling Retirement	577,478
Total Listed Securities	$ 1,302,444
Unlisted Securities	
Castle Harlan Affiliates IV - AI, L.P.	$ 45,988
Castle Harlan Affiliates V - AI, L.P.	7,774
The Diner Club I, L.P.	26,125
Mid-Atlantic Fund of Funds II, L.P.	48,432
Total Unlisted Securities	$ 128,319
Real Estate Owned	
Residence - Washington, DC	$ 2,500,000
Residence - Chagrin Falls, Ohio	349,000
Total Real Estate Owned	$ 2,849,000
Real Estate Mortgages Payable	
Residence - Washington, D.C.	$ 1,375,984
Residence - Chagrin Falls, Ohio	294,759
Residence - Chagrin Falls, Ohio	59,700
Total Real Estate Mortgages Payable	$ 1,730,443

AFFIDAVIT

I, **KATHLEEN McDONALD O'MALLEY**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 9, 2010
(DATE)

Kathleen M. O'Malley
(NAME)

Madeline M Bitzan-Powell
(NOTARY)

MADELINE M BITZAN-POWELL
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 07, 2012
Recorded in
Cuyahoga County

Senator WHITEHOUSE. Thank you. We are delighted to have you with us. I am conscious, as I chair these hearings, of how significant they are, as we consider some of America's finest individuals, really our best and our brightest, our most committed and dedicated for lifelong positions on the Federal bench.

You have already crossed the first hurdle and are now going from the trial to the appellate level, and we are very proud to have you here.

We are very conscious on this Committee that every day, Federal judges make decisions that affect the lives of everyday Americans; not only the everyday Americans right before them in that case, but others whose lives are affected by the holdings that they deliver.

So it is important to us, and I usually ask of judges to assure me that they will, first, respect the role of Congress as the representative branch of government of the American public policy; and, second, that they will decide cases based on the law and the facts; third, that they will not prejudge any case, but listen to every part that comes before them; fourth, that they will respect precedent, like it or not; and, finally, that they will limit themselves to the issues that the court is called upon to decide.

I am sure that question will come as no challenge to you, after your 16 years of distinguished service on the district court. But if you do not mind, may I ask you if you agree with those propositions?

Judge O'MALLEY. Those are easy commitments for me to make and I think that my 16 years on the bench and my record has proven that I have adhered to all of them.

Senator WHITEHOUSE. Well, I appreciate that very much, and I am delighted to have you here.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

Judge O'Malley, it is a pleasure to see you. You have got a good long history in judicial work. I think it will stand you in good stead.

Let me ask a question or two, because it goes to maybe what I think the role of a judge should be.

There have been some criticisms of Justice Roberts' metaphor that a judge should be a neutral umpire. But I like it. I mean, a judge does not take sides in the game, does not decide who he would like to win before the game starts, and fairly calls the plays as best they can, maybe not perfectly, but do their best in an intellectually honest way, and that is the closest we can get to justice, I think.

I do believe that there is objective truth and our entire justice system, we have been taught since our earliest days, is to find the truth and then render opinions based on that.

You, in an interview discussing your appointment to the bench in 1994 and the impact Judge Nathaniel Jones, for whom you clerked, had on you, you stated this, "You have to be true to the law, you have to be intellectually honest," A-double-plus, triple-plus, for that.

And you went on to say, "You can't say I want a certain result and set out to achieve that result, regardless of where the law real-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00418 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

ly takes you. Jones' attempt to strike a balance between those two ultimate goals is something that stayed with me throughout my career."

But what two goals were you talking about, the striking a balance between two goals? Do you recall that? If you do not, do not let me bother you with it.

[Laughter.]

Judge O'MALLEY. I think what was said about Judge Jones the first time that I spoke about that is that Judge Jones said that judges can play an important role in the world and in society. For instance, it's because of judicial rulings that everyone has a right to counsel ultimately, and that conclusion has been reached. But he said judges should never seek to play a role in society that goes beyond applying the facts to the law that is before them.

So what he was saying is that you can play a very important role, but only within the bounds of what the framers intended for that branch of government.

Senator SESSIONS. I think that is a fair answer. I am not sure exactly how you balance that, but there is—I call it the Siren's Song of Activism. Some judges seem to get a little bored on the bench and like to make a little history.

I think it is a temptation you should normally reject, although sometimes you are thrust into a situation where you have to make a decision not fully understanding.

You have two death penalty cases that you have been reversed on; one where the defendant failed to object to a jury instruction because the defendant's lawyer said, "Well, I didn't object because I thought it would be futile," and you overturned the death penalty part of it, not the conviction, as I understand it.

But the Supreme Court has rejected this futility standard. It said you cannot not object and then later complain and come before the court and say, "Well, I didn't think you would rule with me, anyway, Judge," and still preserve error.

How do you evaluate the way you handle that in life?

Judge O'MALLEY. At the time that was decided, which was very early in my career, so almost 15 years ago, the Supreme court had not been as clear at that point with respect to that issue. And in my original opinion, I actually stated at some length that the issue of exhaustion and the issue as to whether or not procedural default would apply was a very close call.

Ultimately, the sixth circuit disagreed with me on that narrow question. Out of a 180-page opinion, that is the only thing they disagreed with.

But even at the time, I acknowledged that it was a close issue and that the law was not fully developed as it would apply to those particular facts.

Senator SESSIONS. And the sixth circuit affirmed you in the *Esparza* v. *Mitchell* case. However, they were reversed by the Supreme Court, an occasion on which you, again, upheld an objection to a death penalty case.

Would you want to comment on that briefly?

Judge O'MALLEY. Again, the sixth circuit did affirm me in a unanimous opinion with respect to the *Esparza* case. There were a number of issues in that case particularly having to do with the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00419 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

fact that the jury was never told about frontal lobe damage to the defendant.

I think, actually, given the development of case law out of the Supreme Court since then, if the Court were to get the *Esparza* decision today, it might actually reach a different result.

Senator SESSIONS. Let me ask you to just make an affirmation, if you will, that you will—that you are prepared to give the government, the state prosecutors and the Federal prosecutors a fair shake and follow the law with regard to death penalty cases and that you have no personal feelings about the death penalty that would impair your ability to objectively and fairy adjudicate those cases.

Judge O'MALLEY. Absolutely, Senator. If you look at my record, you will see that I have affirmed more death penalties than I have set aside throughout the course of my career.

Senator SESSIONS. Well, I appreciate that and I think those cases both were close cases and good people could disagree on them.

I would just say you have got the kind of experience that would appear to warrant elevation to the court of appeals and I look forward to—at this point, I am not aware of anything that would cause me to have serious concern about your nomination.

Judge O'MALLEY. Thank you, Senator.

Senator SESSIONS. Mr. Chairman I am—well, I have a few more minutes before I will have to leave.

Senator WHITEHOUSE. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Judge O'Malley, Senator Brown gave a great introduction to you and I congratulate you and the minions behind you.

[Laughter.]

Senator FRANKEN. You are Irish Catholic. Is that right?

Judge O'MALLEY. How did you guess?

Senator FRANKEN. My wife is Irish Catholic. Also, you are named O'Malley.

[Laughter.]

Senator FRANKEN. If you are confirmed, you will start to consistently hear a lot of intellectual property cases and in those cases, you are very often going to have to weigh the public's interest in then the free flow of information against proprietary interests or protecting investments.

This is coming up a lot in the net neutrality debate, where a lot of us in the government want to ensure a free and open Internet, and where we also want to guard against piracy.

Can you tell me how you are going to go about weighing those interests?

Judge O'MALLEY. Well, Senator, thank you. Those interests or, actually, the balance with respect to those interests are actually spelled out in the statutes that we would need to apply.

So the Patent Act, the trademark laws, the laws that I would have to apply actually contain the very balances that you are talking about.

They were Congressional decisions and my job is to apply that balance as Congress has dictated it.

Senator FRANKEN. Well, I am glad to hear you say that, as if I was doubting that you would do that. But we were talking here

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00420 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

about activism and judicial modesty, and I do have a concern myself about—what did you call it—the Silent Song of Activism, I think the Ranking Member called it.

Senator SESSIONS. Siren's Song.

Senator FRANKEN. Oh, the Siren's Song. Oh, I see. Much better than Silent Song.

Senator SESSIONS. Some songs are better silent.

Senator FRANKEN. Well, anyway, that was my real question, which is, is it Silent or Siren's Song and the Ranking Member answered it.

But thank you and congratulations again.

Judge O'MALLEY. Thank you, Senator.

Senator WHITEHOUSE. Thank you very much, Judge O'Malley. We are pleased that you are here. It is always a pleasure and an honor when the Ranking Member is here for these and his assurances that he sees nothing to inhibit your going forward is always pleasant news and the fact that there is not a whole wall of people on that side with questions is also usually a pleasant sight.

So I will excuse you and we look forward to the Committee taking up your nomination in short order. And then I am going to assume it will be taken to the floor, where, along with a great number of other judges who cleared the Committee unanimously or with microscopic dissenting votes, we will descend into political quicksand for a while.

Regrettably, that is the current situation. I hope that we can clear judges through, but I must say that there are judges who have cleared the Committee unanimously who have sat for months and months and months and months on the Senate floor awaiting a vote.

Judge O'MALLEY. I have ultimate faith that won't happen.

Senator WHITEHOUSE. It is always good to have faith, Judge O'Malley.

Judge O'MALLEY. Thank you very much, Senator, and my whole family thanks you, as well.

Senator WHITEHOUSE. Congratulations to you and to your family. We are proud to have you with us.

We will take just a 2-minute recess while the next panel comes forward.

[Recess.]

Senator WHITEHOUSE. Will you please stand and be sworn?

[Nominees sworn.]

Senator WHITEHOUSE. Thank you very much. Please be seated.

If you would like to each take a moment to introduce your family and friends who are here, we would welcome that. And it is good to have that on the record of these proceedings for posterity.

STATEMENT OF BERYL A. HOWELL, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Ms. HOWELL. Thank you very much, Chairman Whitehouse. I want to take the opportunity, first, to thank the committee, Chairman Leahy for his very gracious and kind remarks this morning, as well as Representative Norton. Thank you, Chairman Whitehouse, for chairing the hearing, and, Senator Franken, for being here. I really appreciate all the work that goes in on preparing for

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00421 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

hearings and for the Committee giving me the opportunity to be here today.

I also want to thank President Obama. I am profoundly humbled and honored by his nomination of me and for the opportunity to be considered by this Committee and the Senate to give its consent to my appointment to the bench for the district court for the District of Columbia.

I with your forbearance, I do want to take the opportunity to introduce some of my family and friends who are here.

Senator WHITEHOUSE. We would like that.

Ms. HOWELL. Starting with my husband, Michael Rosenfeld, who has been my unwavering support since we met in college. My parents, Colonel Howell and Ruth Howell. My father has spent a career in the military, doing public service, and instilled in both my siblings and me the ethic that you should always leave a place better than you found it, including picking up litter that you didn't leave, and I think that that is a public service commitment that all of us have endeavored to fulfill.

Senator WHITEHOUSE. We thank him for his service and wise counsel.

Ms. HOWELL. Yes. And my son, George Rosenfeld, is here. He is a rising junior at Columbia University and has taken time off from his two summer jobs in New York to come down for the hearing.

My two daughters, whose names I did want to mention, Alina Rosenfeld. She can't be here because she is volunteering in an orphanage in Nicaragua. And my other daughter, my 12-year-old daughter, Calla Rosenfeld, has decided this would be a little boring and decided to stay in camp in Vermont.

Senator WHITEHOUSE. The chairman, I know, would appreciate that choice.

[Laughter.]

Ms. HOWELL. I do want to take the opportunity, also, to thank my mother-in-law, Judy Rosenfeld, who is also in Vermont, for her loving support for the past 30 years.

I also have a friend, Kirby Heller, who is here. She is a dear friend from when we were prosecutors together.

Thank you very much for the opportunity to do that.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00422 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Beryl Alaine Howell

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

   United States District Judge for the District of Columbia

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

   U.S. Sentencing Commission
   One Columbus Circle, NE
   Suite 2-500, South Lobby
   Washington, D.C. 20002-8002

4. Birthplace: State year and place of birth.

   1956; Ft. Benning, Georgia

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

   1980 –1983; Columbia University School of Law; J.D., 1983

   1974 – 1978, Bryn Mawr College; B.A., 1978

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

66720.373

2010
American University Washington College of Law
4801 Massachusetts Avenue, NW
Washington, D.C. 20016-8181
Adjunct Professor

2009 – Present
Home Address
Washington, D.C.
Consultant (self-employed)

2004 – Present
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Commissioner

2003 – 2009
Stroz Friedberg
1150 Connecticut Avenue, NW
Washington, D.C. 20036
Executive Managing Director and General Counsel (2007 – 2009)
Partner and General Counsel of Washington, D.C. Office (2006)
Managing Director and General Counsel of Washington, D.C. Office (2003 – 2005)

1993 – 2003
United States Senate, Committee on the Judiciary
Washington, D.C. 20510
General Counsel (1997 – 2003)
Senior Counsel, Subcommittee on Antitrust, Business Rights, and Competition (1995 – 1996)
Senior Counsel, Subcommittee on Technology and the Law (1993 – 1994)

1987 – 1993
U.S. Attorney's Office for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Deputy Chief, Narcotics Section (1990 – 1993)
Assistant U.S. Attorney (1987 – 1993)

1985 – 1987
Schulte Roth & Zabel
900 Third Avenue
New York, New York 10022
Litigation Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00424 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.374

1983 – 1984
United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101
Law Clerk to the Honorable Dickinson R. Debevoise

1983
Schulte Roth & Zabel
900 Third Avenue
New York, New York 10022
Summer Associate

1982 & 1983
U.S. Attorney's Office for the Southern District of New York
One St. Andrews Plaza
New York, New York 10007
Summer Law Clerk (uncompensated)

1978 – 1980 & 1981
Shanley & Fisher
550 Broad Street
Newark, New Jersey 07102
Legal Assistant (1978 – 1980)
Summer Associate (1981)

Other Affiliations (uncompensated)

2008
Commission on Cyber Security for the 44th Presidency
Center for Strategic and International Studies (CSIS)
1800 K Street, NW
Washington, D.C. 20006
Member

2005 – Present
Center for Democracy and Technology
1634 I Street, NW, Suite 1100
Washington, D.C. 20006
Member of Board (2005 – Present)
Treasurer (2008 – Present)

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00425 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.375

I have not served in the military, nor did I register for selective service.

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

Director's Award from the Federal Bureau of Investigation (2006)
First Amendment Award, Society of Professional Journalists (2004)
Freedom of Information Act Hall of Fame (2001)
Certificate for Outstanding Contributions in the field of Drug Law Enforcement from Drug Enforcement Administration (1993)
Award from New York City Department of Investigation for public corruption investigation and prosecution (1992)
Award from Federal Bureau of Investigation for public corruption investigation and prosecution (October 1992)
Award from Drug Enforcement Administration, Asian Heroin Task Force (1992)
Attorney General's Director's Award for Superior Performance (1991)
U.S. Attorney's Special Achievement Award for Sustained Superior Performance (1991)
Certificate for Outstanding Contributions in the field of Drug Law Enforcement from Drug Enforcement Administration (1990)
U.S. Attorney's Special Achievement Award for Sustained Superior Performance (1990)
International Fellows Program, Columbia University School of Law (1982-83)
Harlan Fiske Stone Scholar, Columbia University School of Law (1981-82)
President and Member, Honor Board, Bryn Mawr College (1976-78)

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

American Bar Association
Bar Association for the District of Columbia

10. **Bar and Court Admission**:

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

New York, 1984
District of Columbia, 1997

There has been no lapse in membership.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00426 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.376

Supreme Court of the United States, 1997
District of Columbia Court of Appeals, 1997
United States Court of Appeals for the Second Circuit, 1989
United States District Court for the Eastern District of New York, 1987
United States District Court for the Southern District of New York, 1985
New York Supreme Court, Appellate Division (First Department), 1984

There has been no lapse in membership.

11. Memberships:

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

Francis Scott Key Elementary School (Washington, DC), Parent Teacher Association (1999 – 2003)
Member and Secretary of Executive Committee (1999 – 2003)
Lake Dunmore/Fern Lake Association (Leicester, Vermont) (approximately 1995 - Present)
Commission on Cyber Security for the 44th Presidency, Center for Strategic and International Studies (CSIS) (2008)
Center for Democracy and Technology, Member of Board (2005- Present) and Treasurer (2008 - Present)

From time to time in previous years, I have supported various cultural institutions, such as the Kennedy Center, and may have been considered a "member." I do not recall the dates of membership.

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

None of the organizations listed above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00427 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.377

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

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

I have searched my files and electronic databases in an effort to locate all published material responsive to this question. I have located the materials listed below, but it is possible there are a few that I have been unable to identify.

Beryl A. Howell, *"Sentencing of Antitrust Offenders: What does the Data Show?"* American Bar Association, Section on Antitrust, Fall Forum Conference Book (November 12, 2009).

Beryl A. Howell, *"Lawyers on the Hook: Counsel's Professional Responsibility to Provide Quality Assurance in Electronic Discovery,"* Journal of Securities Law, Regulation & Compliance, Vol. 2, No. 3 (2009).

Beryl A. Howell and Laura Wertheimer, *"Data Detours In Internal Investigations In EU Countries,"* The Metropolitan Corporate Counsel (October & November, 2008); *reprinted in* ABA 23rd Annual National Institute on White Collar Crime Conference Book, at O-23 (March, 2009).

Beryl A. Howell, *"Digital Contraband: Finding Child Porn in the Workplace,* ABA 22nd Annual National Institute on White Collar Crime Conference Book, at Q-39 (March, 2008).

Beryl A. Howell and Brian M. Heberlig, *"The Lamar Owens Case: How Digital Evidence Contributed to an Acquittal in an Explosive Rape Case,"* The Computer & Internet Lawyer, Vol. 24, No. 12 (December, 2007).

Steven M. Dettelbach and Beryl A. Howell, *"Return to Sender: Justice Department Lawyers Should Review National Security Letters before FBI Delivery,"* Legal Times, Vol. XXX, No. 27 (July 2, 2007).

Beryl A. Howell and Dana Lesemann, *"FISA's Fruits in Criminal Cases: An Opportunity for Improved Accountability,"* UCLA Journal of International Law and Foreign Affairs, Vol. 12, No. 1 (Spring 2007).

Beryl A. Howell and Rick Wolf, *"Rough Waters Ahead: No Smooth Sailing and No Safe Harbor; Ediscovery and the New Federal Rules of Civil Procedure,"* ACC Docket (January-February, 2007).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00428 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.378

Beryl A. Howell, *"Real World Problems of Virtual Crime,"* Chapter 5, Cybercrime: Digital Cops in a Networked Environment, ed. Jack M. Balkin, et al. (New York University Press) (2007).

Beryl A. Howell, *"Foreign Intelligence Surveillance Act: Has the Solution Become the Problem?"* Chapter 9, Protecting What Matters: Technology, Security, and Liberty Since 9/11, ed. Clayton Northouse (The Brookings Institution Press) (2006).

Beryl A. Howell and Rick Wolf *"Finding a Safe Harbor: Before Relying on Sanctions Shield in Electronic Discovery, Companies Need to Get Their IT House In Order,"* New York Law Journal's GC-New York (November 13, 2006).

Beryl A. Howell and Sam Rubin, *"What You Need to Know about Digital Forensics,"* The Pennsylvania Lawyer (November-December 2006).

Beryl A. Howell, *"The Slippery Slope From Spoliation to Obstruction,"* New York Law Journal Vol. 236, No. 18 (July 27, 2006).

Beryl A. Howell and Andrew Weissmann, *"Obstruction for Data Destruction After Andersen,"* New York Law Journal Vol. 235, No. 110 (June 8, 2006).

Beryl A. Howell, *"Using Computer Forensics to Pursue Civil Justice,"* 2006 National Conference of The National Crime Victim Bar Association (May 12, 2006).

Beryl A. Howell, *"Proving Web History: How to Use the Internet Archive,"* Journal of Internet Law (February 2006).

Beryl A. Howell, *"Digital Forensics: Sleuthing on Hard Drives and Networks,"* The Vermont Bar Journal (Fall 2005).

Beryl A. Howell and Eric Friedberg, *"Hard to Hide on Computer Hard Drives"* Chapter IA-1, Cybercrime & Security (ed. Professor Pauline C. Reich) (March 2005).

Beryl A. Howell, *"Strategic Planning At Outset of E-Discovery Can Save Money In the End,"* Digital Discovery and E-Evidence (February 2005).

Beryl A. Howell, *"Surveillance Powers in the USA PATRIOT Act: How Scary Are They?"* The Pennsylvania Bar Association Quarterly, Vol. LXXVI, No. 1 (January 2005).

Beryl A. Howell, *"Real World Problems of Virtual Crime,"* Joint Special Issue on Cybercrime of Yale Journal of Law & Technology and International Journal of Communications Law & Policy (Autumn 2004).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00429 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.379

Beryl A. Howell and Paul H. Luehr, "*Child Porn Poses Risks to Companies That Discover It in the Workplace*," Tech Trends/Litigation Pull-Out Section of The New York Law Journal (October 4, 2004).

Beryl A. Howell, "*Electronic Discovery: Getting It Right Is Hard – Getting It Wrong Is Worse*," 12th Annual Advanced ALI-ABA Course of Study in Criminal Enforcement of Environmental Laws (October 1, 2004).

Beryl A. Howell, "*Seven Weeks: The Making of the USA PATRIOT Act*," The George Washington Law Review, Vol. 72, No. 6 (August 2004).

Beryl A. Howell, "*Cyber-Security Liability: Is it Time to Get Off the Soapbox?*" The Computer & Internet Lawyer, Vol. 22, No. 5 (May 2004).

Beryl A. Howell, "*Ambiguities in US law for Investigators*," Digital Investigation, Vol. 1 (April 2004).

Beryl A. Howell, "*Information Overload*," Legal Times, Vol. XXV, No. 22 (June 2, 2003).

Beryl A. Howell and Eric Friedberg, "*21st Century Forensics: Searching for the 'Smoking Gun' in Computer Hard Drives*," The Prosecutor, the monthly publication of the National District Attorneys Association (November/December 2003).

Beryl A. Howell and Stacey J. Moritz, "*Mail Fraud, Wire Fraud and Securities Fraud as Predicate Acts in Civil RICO Actions*," Civil RICO (Practicing Law Institute) (1985 & 1986).

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

I have searched my files and electronic databases in an effort to locate all reports, memoranda, and policy statements responsive to this question. I have located the materials listed below, but it is possible there are a few that I have been unable to identify.

"Securing Cyberspace for the 44th Presidency," Commission on Cyber Security for the 44th Presidency, sponsored by the Center for Strategic and International Studies (December 2008). This report is available at: http://csis.org/files/media/csis/pubs/081208_securingcyberspace_44.pdf

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00430 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.380

United States Sentencing Commission Reports and Statements:

While I have served as a Commissioner on the United States Sentencing Commission, the Commission has issued, on an annual basis, federal sentencing guidelines manuals, sourcebooks of federal sentencing statistics, and yearly reports. The Commission has also issued, on a periodic basis, reports on federal sentencing statistics. These materials, as well as reports on the following subject matters, are available at www.ussc.gov:

- 2004: Annual Report, United States Sentencing Commission
- 2005: Annual Report, United States Sentencing Commission
- 2006: Annual Report, United States Sentencing Commission
- 2007: Annual Report, United States Sentencing Commission
- 2008: Annual Report, United States Sentencing Commission
- 2004: Sourcebook of Federal Sentencing Statistics
- 2005: Sourcebook of Federal Sentencing Statistics
- 2006: Sourcebook of Federal Sentencing Statistics
- 2007: Sourcebook of Federal Sentencing Statistics
- March 2006: Report to Congress: Final Report on the Impact of United States v. Booker on Federal Sentencing
- May 2007: Report to Congress: Cocaine and Federal Sentencing Policy
- Sept. 2008: Report to the Congress; Amendments to the Federal Sentencing Guidelines in Response to the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007

During my tenure, the Commission also held numerous public meetings, hearings, national seminars, and symposia; filed briefs in the U.S. Supreme Court; issued periodic newsletters; and written letters to Members of Congress. Minutes of the Commission's public meetings, transcripts of select public hearings, Supreme Court briefs, and other materials listed below can be found at www.ussg.gov.

Commission Public Hearings

- February 15, 2005: Public Hearing, United States Sentencing Commission
- February 16, 2005: Public Hearing, United States Sentencing Commission
- April 12, 2005: Public Hearing, United States Sentencing Commission
- February 21, 2006: Public Hearing, United States Sentencing Commission
- March 6, 2006: Public Hearing, United States Sentencing Commission
- March 15, 2006: Public Hearing, United States Sentencing Commission
- November 14, 2006: Public Hearing, United States Sentencing Commission
- March 20, 2007: Public Hearing, United States Sentencing Commission
- November 13, 2007: Public Hearing, United States Sentencing Commission
- March 13, 2008: Public Hearing, United States Sentencing Commission
- Feb. 10-11, 2009: Public Hearing, United States Sentencing Commission

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00431 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.381

- May 27-28, 2009: Public Hearing, United States Sentencing Commission
- July 9-10, 2009: Public Hearing, United States Sentencing Commission
- Sept. 9-10, 2009: Public Hearing, United States Sentencing Commission
- Oct. 20-21, 2009: Public Hearing, United States Sentencing Commission
- Nov. 19-20, 2009: Public Hearing, United States Sentencing Commission
- Jan. 20-21, 2010: Public Hearing, United States Sentencing Commission
- March 17, 2010: Public Hearing, United States Sentencing Commission
- May 27, 2010: Public Hearing, United States Sentencing Commission

Commission Publications and Newsletters

- March 2010: Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Analysis
- December 2009: Overview of Federal Criminal Cases Fiscal Year 2008
- October 2009: The History of The Child Pornography Guidelines
- July 1, 2009: Mandatory Minimums and Unintended Consequences
- May 2009: Introduction to the Collection of Individual Offender Data by the United States Sentencing Commission
- March 2009: Impact of Prior Minor Offenses on Eligibility for Safety Valve
- January 2009:Alternative Sentencing in the Federal Criminal Justice System
- December 2008: Overview of Federal Criminal Cases Fiscal Year 2007
- December 2008: Changing Face of Federal Criminal Sentencing: Seventeen Years of Growth in the Federal Criminal Caseload
- November 2008: Report on Federal Escape Offenses in Fiscal Years 2006 and 2007
- Fall 2006: Guidelines Newsletter
- May 2007: Guidelines Newsletter
- Winter 2010: Guidelines Newsletter

Commission Briefs

- Jan 2007: In the Supreme Court of the United States; Nos. 06-5618 & 06-5754 Mario Claiborne, Petitioner v. United States of America, Respondent; Victor A. Rita, Jr., Petitioner v. United States of America, Respondent
- March 2010: In the Supreme Court of the United States; No. 09-6338, Percy Dillon, Petitioner v. United States of America, Respondent

Commission Letters to Congress

- April 19, 2005: USSC Letter to the House Judiciary Committee regarding H.R. 1528, the "Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005"
- August 27, 2008: USSC Letter to House and Senate Judiciary Committees regarding Court Security Offenses

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00432 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.382

- June 17, 2009: USSC Letters to Senators Durbin and Coburn on Human Trafficking Offenses
- November 10, 2009: USSC Letter to 11 Members of Congress Regarding Undue Influence Enhancement

Commission Programs

- 2005 - 2010: Annual National Seminar on the Federal Sentencing Guidelines (Agendas Only)
- Jul. 14-15, 2008: Proceedings from Symposium on Alternatives to Incarceration
- Aug 11, 2005: 2005 National Sentencing Policy Institute

The Chair of the U.S. Sentencing Commission periodically testifies on behalf of the Commission before various Congressional committees. The testimony, listed below, can be found on www.ussc.gov.

- March 16, 2006: Prepared Statement of Ricardo H. Hinojosa, Chair, USSC, before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security
- June 26, 2007: Prepared Statement of Ricardo H. Hinojosa, Chair, USSC, before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security
- February 12, 2008: Prepared Statement of Ricardo H. Hinojosa, Chair, USSC, before the Senate Judiciary Committee's Crime and Drug Subcommittee
- February 26, 2008: Prepared Statement of Ricardo H. Hinojosa, Chair, USSC before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security
- April 29, 2009: Prepared Statement of Ricardo H. Hinojosa, Acting Chair, USSC, before the Senate Judiciary Committee's Crime and Drug Subcommittee
- May 21, 2009: Prepared Statement of Ricardo H. Hinojosa, Acting Chair, USSC, before the House Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

It is important to note that while members of the Commission contribute to its guidelines, reports, briefs, letters, and other statements of the Commission, these materials are representative of the Commission as a whole, and not of any single Commissioner.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00433 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.383

I have searched my files and electronic databases in an effort to locate material responsive to this question. I have located the material listed below, but it is possible there are a few that I have been unable to identify.

Testimony, Hearing on Nomination to be Commissioner on the United States Sentencing Commission, United States Senate Committee on the Judiciary, September 22, 2004.

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

I have searched my files and electronic databases in an effort to locate all speeches or talks that are responsive to this question. I have located the materials listed below but it is possible there are a few that I have been unable to identify.

June 18, 2010: Moderator of panel on Organizational Guidelines at Annual National Sentencing Seminar, New Orleans, Louisiana.

June 17, 2010: Participation on panel at plenary session on Guideline amendments at Annual National Sentencing Seminar, New Orleans, LA.

January 14, February 4, March 4, 18, 25, and April 22, 2010: Notes for Legal Ethics class, American University's Washington College of Law.

March 3, 2010: Remarks on the work of the U.S. Sentencing Commission to law school class at Brooklyn Law School, Brooklyn, NY.

February 25, 2010: Participation in panel discussion on "Sentencing in White Collar Criminal Cases and Witness/Victim Rights," at American Bar Association's White Collar Crime Conference, Miami, Florida.

November 12, 2009: Moderator of panel discussion on "The Legislative Agenda," at American Bar Association's Section on Antitrust, Fall Forum, Washington, D.C.

November 6, 2009: Participation on Panel at American Bar Association's Conference on Sentencing, George Washington University, Washington, DC.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00434 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.384

June 12, 2009: Moderator of panel on Organizational Guidelines at Annual National Sentencing Seminar, New Orleans, Louisiana.

June 11, 2009: Participation on panel at plenary session on Guideline amendment prompted by Drug Trafficking Vessel Interdiction Act of 2008 at Annual National Sentencing Seminar, New Orleans, LA.

June 5, 2009: Presentation on organizational guidelines at 4th Annual Compliance Week Conference, Washington, DC.

June 4, 2009: Presentation on "Federal Enforcement and Corporate Compliance: Knowing and Managing the Risks," Practicing Law Institute's Corporate Compliance and Ethics Institute 2009, New York City, New York.

May 22, 2009: Participation in panel discussion on "Federal Sentencing After Rita, Kimbrough and Gall," at 18th Annual National Federal Sentencing Guidelines Seminar, Clearwater, Florida.

May 20, 2009: Participation in panel discussion on "How Would We Structure an Independent Commission for Identifying Labor Shortages," at symposium on Immigration and Labor Shortages, jointly sponsored by the Economic Policy Institute, Migration Policy Institute and Johns Hopkins University, Washington, DC.

May 5, 2009: Welcoming Remarks at U.S. Sentencing Commission's Data and Research Conference, Washington, DC.

April 21, 2009: Participation in panel discussion on "The Challenges of Creating and Implementing An Effective Corporate Compliance Program," at conference on Achieving the Right Balance: The Role of Corporate Criminal Law in Ensuring Corporate Compliance, Georgetown University Law Center, Washington, DC.

March 26, 2009: Presentation on "Federal Enforcement and Corporate Compliance: Knowing and Managing the Risks," Practicing Law Institute's Corporate Compliance and Ethics Institute 2009, Atlanta, Georgia.

February 17, 2009: Remarks on the work of the U.S. Sentencing Commission to law school class at Brooklyn Law School, Brooklyn, NY.

February 5, 2009: Presentation on "Ethics and Compliance in the New Administration," to The Conference Board's Global Council on Business Conduct, Washington, DC.

February 2, 2009: Participation in panel discussion on "The Sentencing and Corrections Challenge: Reinventing the Criminal Justice System" at 4th Annual

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00435 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.385

Harry Frank Guggenheim Symposium on Crime in America titled "A New Beginning? Exploring the Criminal Justice Challenges Over the Next Four Years," John Jay College Of Criminal Justice, New York City, New York.

November 6, 2008: Participation in panel discussion on "Jumping the Pond – International Criminal Investigations," at conference on Defending the White Collar Case sponsored by the National Association of Criminal Defense Lawyers and Georgetown University Law Center, Washington, DC.

October 24, 2008: Participation in panel discussion on "The Future of White Collar Sentencing Practice: What Practitioners Need to Know," at ABA Sentencing Advocacy, Practice and Reform Institute, Washington, DC.

October 1, 2008: Presentation on "The Making of the USA PATRIOT Act" to U.S. Naval Academy first year classes, Annapolis, Maryland.

September 24, 2008: Participation in panel discussion at plenary session on "The Ethics and Compliance Handbook," at Annual Business Ethics & Compliance Conference of Ethics and Compliance Officers Association, Orlando, Florida.

July 15, 2008: Moderator of panel discussion on "States' Implementation of Alternatives to Incarceration," at U.S. Sentencing Commission's Symposium on Alternatives to Incarceration, Washington, DC.

July 14, 2008: Participation in opening panel discussion and as moderator of panel on "Intensive Supervision/ Electronic Monitoring/GPS" at U.S. Sentencing Commission's Symposium on Alternatives to Incarceration, Washington, DC.

June 25, 2008: Participation in panel discussion at plenary session on "Sentencing Considerations post-Booker, Rita, Gall and Kimbrough" at 2008 National Sentencing Policy Institute of the U.S. Judicial Conference Committee on Criminal Law, Long Beach, California.

June 19, 2008: Presentation on "Real Insider Investigations: How to Facilitate Successful Investigations," at The Summit on Insider Threats, sponsored by MIS Training Institute, Arlington, Virginia.

June 11, 2008: Participation in panel on "Electronic Discovery in Government Contracts Disputes and Other Suits Against the Federal Government," sponsored by the ABA Contract Claims & Disputes Resolution Committee in conjunction with the Federal Circuit Bar Association Government Contracts Committee and the Court of Federal Claims Bar Association, Washington, DC.

June 9, 2008: CLE presentation on "Electronic Discovery: Technology, Strategy & Emerging Standards," to White & Case LLP, Washington, DC.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00436 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.386

May 23, 2008: Moderator of panel on "Organizational Guidelines," at 17th Annual National Seminar on the Federal Sentencing Guidelines, Orlando, Florida.

May 22, 2008: Participation in panel at plenary session on "U.S. Sentencing Commission: A year in Review," at 17th Annual National Seminar on the Federal Sentencing Guidelines, Orlando, Florida.

April 30, 2008: Presentation on "Data Detours: E-Discovery and the EU Data Protection Directive," to White Collar Women's Criminal Defense group, Washington, DC.

April 24, 2008: CLE presentation on "Electronic Discovery: Technology, Strategy & Emerging Standards," to Wheat Wu, Washington, DC.

April 7, 2008: Guest Lecturer on "U.S. Sentencing Commission," Fordham Law School, New York City, New York.

March 6, 2008: Participation in panel on "Electronic Discovery: Subpoenas vs. Search Warrants," at the 22nd Annual National Institute on White Collar Crime, sponsored by The ABA Criminal Justice Section and the ABA Center for Continuing Legal Education, Miami, Florida.

February 14, 2008: Participation in Webinar on "Electronic Discovery and Safeguarding Documents: Enforcing Litigation Holds," sponsored by LRN, Washington, DC.

December 17, 2007: Presentation on "Digital Forensics in Internal Investigations," at Wiley Rein, LLP, Washington, DC.

November 16, 2007: Participation in panel on "Analyzing Ethics in the Securities Arena" at 3rd Securities Litigation Conference, sponsored by IQPC, New York City, New York.

October 3, 2007: Participation in panels on "Ethical Implications of E-Discovery " and "Responding to Government and Exploring the Range Of Sanctions Available," at conference on Best Practices for Information Retention and E-Discovery Management sponsored by IQPC, Jersey City, New Jersey.

July 19, 2007: Participation in panel on "The Guideline Amendment Process and Interaction with Other Branches" at National Advocacy Center (NAC)"s Sentencing Issues Seminar, Charleston, South Carolina.

May 24, 2007: Moderator of panel on "Organizational Sentencing Guidelines," 16th Annual National Seminar on the Federal Sentencing Guidelines, Salt Lake City, Utah.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00437 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.387

May 24, 2007: Participation in panel at plenary session on "Federal Sentencing Guidelines Post-BOOKER," with discussion of criminal history amendment at 16th Annual National Seminar on the Federal Sentencing Guidelines, Salt Lake City, Utah.

May 24, 2007: Participation in panel at plenary session on "Sentencing Issues and the Congress," at 16th Annual National Seminar on the Federal Sentencing Guidelines, Salt Lake City, Utah.

May 2, 2007: Presentation on "Employment Law & Electronic Evidence: Investigating, Litigating, Resolving Conflicts," to Morrison Cohen LLP, New York City, New York.

April 19, 2007: Participation in panel on "E-Discovery: Managing Compliance and Risk Challenges," Ethics and Compliance Officer Association's Sponsoring Partner Forum, Weston, Florida.

March 15, 2007: Participation in program on "Recovery and Use of Electronic Data In Internal Inquiries and Criminal Cases," Edward Bennett Williams American Inn of Court Program, U.S. Federal Courthouse, Washington, DC.

December 5, 2006: Participation in panel on "Complying with Document Preservation and Production Obligations," at American Conference Institute's Forensics Investigation conference, New York, New York.

November 10, 2006: Presentation on "Privacy, Security and Identity Theft," to Joint Law Conference of HFMA Colorado Chapter and Health Law Section of the Colorado Bar Association, Denver, Colorado.

November 8, 2006: CLE presentation on "Brave New World: Preparing for Electronic Discovery under the New FRCP Amendments," to Sally & Fitch LLP, Boston, Massachusetts.

November 3, 2006: CLE presentation on "Brave New World: Preparing for Electronic Discovery under the New FRCP Amendments," to Sher & Blackwell LLP, Washington, DC.

October 26, 2006: Presentation on "Effective Compliance and Ethics Programs," at Ethisphere Council Luncheon, Washington, DC.

October 24, 2006: Presentation on "How Slippery is the Slope from Spoliation to Obstruction?" at Legal IQ Conference on Government Investigations, Arlington, Virginia.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00438 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.388

October 4, 2006: Participation in panel on "Corporate Compliance in the Post-Enron Era" at conference of Ethics and Compliance Officer Association, Salt Lake City, Utah.

July 25, 2006: Participation in panel on "U.S. Sentencing Commission," at National Sentencing Policy Institute of the U.S. Judicial Conference Committee on Criminal Law, Washington, DC.

July 8, 2006: Participation in panel on ""Surveillance and Detention After September 11th," at American Constitution Society conference, Washington, DC. (no notes or transcript).

June 23, 2006: CLE presentation on "Computer Forensics: Law and Strategy," at Vermont Bar Association Conference, Burlington, Vermont.

June 20, 2006: CLE presentation on "Intellectual Property and the Power of Digital Forensics," to Patton Boggs, Washington, DC.

June 8, 2006: Participation in panel on "Update on Counsel Privileges in Internal Investigations," at conference on "Critical Update on Internal and Government Investigations," sponsored by Troutman Sanders LLP, Washington, DC.

June 5, 2006: Participation in panel on "The Science of Compliance or How To Stay Out of the SOX Box: Using Forensics To Close the Gap Between Policy and Practice," at Legal Tech West Conference, Los Angeles, California.

June 2, 2006: Moderator of panel on "Plea Bargaining in the Post-Booker Era," at 15th Annual National Seminar on the Federal Sentencing Guidelines, Miami Beach, Florida.

June 1, 2006: Participation in panel at plenary session on "Meet the Sentencing Commission," at 15th Annual National Seminar on the Federal Sentencing Guidelines, Miami Beach, Florida.

May 12, 2006: Presentation on "Computer Forensics and Civil Litigation," at National Crime Victim Bar Association Conference, Washington, DC.

April 21, 2006: CLE presentation on "Electronic Discovery: Technology, Strategy & Emerging Standards," to Feldesman Tucker Leifer Fidell LLP, Washington, DC.

April 10, 2006: Participation in Panel on "Ethics, Trust, Culture and the Supply Chain: Eliminating Friction and Building Competitive Advantage," at National Contract Management Association (NCMA)'s World Congress 2006, Atlanta, Georgia.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00439 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.389

March 30, 2006: Presentation on "The U.S. Sentencing Commission – an Overview and Update," Practicing Law Institute's Corporate Compliance Institute, Atlanta, Georgia. (No notes or transcript).

February 16, 2006: Participation in program on "Aftermath of Andersen," at Edward Bennett Williams American Inn of Court, U.S. Federal Courthouse, Washington, DC.

November 10, 2005: Presentation on "Employment Law and Electronic Evidence," at Gulf Coast Employment Law seminar sponsored by Phelps Dunbar, New Orleans, Louisiana.

November 17, 2005: Presentation on "Compliance and Ethics," at seminar sponsored by the Career College Association, Arlington, Virginia.

November 15, 2005: CLE presentation on "Computer Forensics: Technology, Law & Strategy," to Kasowitz, Benson, Houston, Texas.

August 8, 2005: Presentation on "The Continuing Evolution of Sentencing: The Effect of Booker/Fanfan on the Federal Guidelines," at conference of the National Association of Sentencing Commission, Washington, DC.

October 26, 2005: Participation in panel on "Open Dialogue with the Commissioners," Ethics Officer Association at Ethics Officer Association conference, San Antonio, Texas.

October 27, 2005: Participation in panel on "Inside the Beltway: Shaping Corporate Governance," at Ethics Officer Association conference, San Antonio, Texas.

September 29, 2005: Presentation on digital forensics at luncheon meeting of Columbia University Law School Association of Washington, DC, Washington, DC.

June 29, 2005: Participation in panel on "Effective Compliance & Ethics Programs in a Post-Booker World," at Ethics Officer Association conference, New York, New York.

May 26, 2005: Participation in panel discussion on "Practice & Procedure in the Post-Booker Era," at the 14th Annual National Seminar on the Federal Sentencing Guidelines, San Francisco, California. (No notes or transcript).

May 17, 2005: Participation in Roundtable Discussion on "Time to Mend the Crack in Justice: Confronting the Disparity in Penalty Between Crack and Powder Cocaine," The Watching Justice Distinguished Speakers Series, National Press Club, Washington, DC.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00440 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.390

March 1, 2005: Presentation on "Role of the U.S. Sentencing Commission," to National Association of Criminal Defense Lawyers, Washington, DC.

February 1, 2005: Presentation to regional forum on "Ethics Compliance and the Organizational Sentencing Guidelines," co-sponsored by the Ethics Officer Association and the United States Sentencing Commission, Dulles, Virginia. (no notes or transcript).

February 23, 2005: Presentation on "Computer Forensics, " at The Federal Bar Association for the Eastern District of Virginia, Legal Education Program on "Cyberlaw: Cybercrime, Civil Copyright Infringement, and Computer Forensics," U.S. Courthouse, Alexandria, Virginia.

January 21, 2005: CLE presentation on "Electronic Discovery" to Phelps Dunbar, New Orleans, Louisiana.

October 1, 2004: Participation in panel discussion on "Higher Hurdles for the Defense: Electronic Discovery, Record Retention, Privilege Logs, and Grand Jury Subpoena Compliance," at 12th Annual Advanced ALI-ABA Course of Study on "Criminal Enforcement of Environmental Laws," Washington, DC.

September 29, 2004: Participation in panel discussion on "Electronic Discovery and Document Retentions Policies," at 2004 Media Law Conference, Washington, DC.

August 12, 2004: Participation in panel discussion on "Balancing Privacy Interests with the Patriot Act," as part of City of Philadelphia Law Department's Continuing Legal Education Meeting, Philadelphia, Pennsylvania.

August 8, 2004: Participation in panel discussion on "Cyber Security Liability – A Growing Legislative Trend," at ABA Annual Meeting, Section of Science & Technology Law, 2004, Atlanta, Georgia. (No notes or transcript).

June 4, 2004: Presentation on "Computer Forensics in Support of Litigation and Investigations," at Annual Retreat of U.S. Attorney's Office for the Eastern District of Pennsylvania, Avalon, New Jersey. (No notes or transcript).

March 27, 2004: Participation in panel discussion on "New Crimes: Virtual Crimes of the Information Age," at conference on Digital Cops in a Virtual Environment: Cyber-Crime and Digital Law Enforcement, sponsored by Yale Law School's Information Society Project, New Haven, Connecticut.

March 12, 2004: Presentation on "Top Ten Pointers for Successful Lobbying on the Hill," at seminar sponsored by the Society of Professional Journalists, Washington, DC.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00441 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.391

December 18, 2003: Presentation on "Computer Forensics In Support of Litigation and Investigations," to Hughes Hubbard & Reed, New York, New York.

October 23, 2003: Participation in panel discussion on "The Future of Internet Surveillance Law," at Symposium on "Surveillance Law: Reshaping the Framework," at The George Washington University Law School, Washington, DC. (No notes or transcript).

September 17, 2003: Remarks on "The USA PATRIOT Act Controversies," Hamilton College Program, Washington, D.C. (No notes or transcript).

September 11, 2003: Presentation on "The PATRIOT Act, Law Enforcement and Civil Liberties," at Conference on Government Secrecy: Local, State, National, sponsored by the Knight Center for Specialized Journalism, Washington, DC. (No notes or transcript).

August 7, 2003: Presentation on "Computer Forensics: Use in Litigation and Investigations," to Computer Science and Telecommunications Board (CSTB), National Research Council of the National Academies, Washington, DC.

August 2, 2003: Participation in panel discussion on "Surveillance and Detention After September 11," at The American Constitution Society for Law and Policy, First National Convention, Washington, DC. (No notes or transcript).

July 17, 2003: Presentation on "Computer Forensics In Support of Litigation and Investigations," to Venable LLP, Washington, DC.

May 28, 2003: Presentation on "Computer Forensics In Support of Litigation and Investigations: What, When, Where and How," to White Collar Women's Criminal Defense group, Washington, DC.

April 22, 2003: Participation in panel discussion on "The War on Terror – Setting the Legal Agenda," sponsored by the ABA Standing Committee on Law and National Security, Washington, DC. (No notes or transcript).

April 16, 2003: Participation in panel discussion on "Playing Games with Privacy: Homeland Security Measures and Your Rights," sponsored by The Federalist Society For Law and Public Policy Studies, Georgetown University Law Center, Washington, DC. (No notes or transcript).

January 25, 2003: Participation in panel discussion on Legislative Briefing: Library Surveillance and the USA PATRIOT Act," at American Library Association Midwinter Conference, Philadelphia, Pennsylvania. (No notes or transcript).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00442 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.392

December 5, 2002: Presentation at conference called "Civil Liberties in an Age of Terror," Knight Center for Specialized Journalism, Washington, DC. (No notes or transcript).

December 3, 2002: Participation in audio conference on "Risks and Rewards In the New Senate: Prospects for Telecom, Views from the Judiciary Committee," for Communications Daily and Washington Internet Daily, Washington, DC.

November 26, 2002: Presentation on "The Digital Rights Management Debate: From the DMCA to the FCC," at Cardozo Law School for course on Regulation of the Electronic Media, New York, New York. (No notes or transcript).

November 22, 2002: Remarks at Model Congress on "How the Judiciary Committee Works," Washington, DC. (No notes or transcript).

November 21, 2002: Participation in panel discussion on "Reconciling the Commons and the Marketplace," at conference on The New Gatekeepers: A Conference on Free Expression in the Arts at Columbia University Graduate School of Journalism, New York, New York.

October 23, 2002: Presentation on "The Evolution of the Debate Over Digital Rights Management: From Encryption and the DMCA To Pending Bills," at Georgetown University's Communication, Culture & Technology Program, Course: Code & Law: Policy Implications of Internet Architecture, Washington, DC.

September 11, 2002: Participation in panel discussion on "Critical Infrastructure Dilemma," at conference of American Society of Access Professionals, Washington, DC. (No notes or transcript).

January 30, 2002: Remarks at "White Collar Practice and the USA PATRIOT ACT," at Women's White Collar Criminal Defense Luncheon, Washington, DC. (No notes or transcript).

January 17, 2002: Participation in panel discussion on "Terrorism and the Law: The USA PATRIOT ACT," at Federal Judicial Center Program For Federal Judges, Washington, DC. (No notes or transcript).

November 14, 2001: Participation in panel discussion on "Future of Intellectual Property," at Cato Institute, Technology and Society Conference, Washington, DC. (No notes or transcript).

November 14, 2001: Participation in panel on "The Information Sharing Provisions in the USA PATRIOT ACT," at conference of American Bar Association's Standing Committee on Law and National Security, Washington, DC. (No notes or transcript).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00443 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.393

November 2, 2001: Participation in panel on "Women, Law and Public Policy," at conference sponsored by Public Leadership Education Network (PLEN), Washington, DC. (No notes or transcript).

November 1, 2001: Participation in panel on "Fighting Terrorism Through Legislation: Where Privacy Rights and Law Enforcement Collide," at conference sponsored by the District of Columbia Bar, Civil Rights Committee of the Criminal Law and Individual Rights Section, Washington, DC. (No notes or transcript).

April 4, 2001: Participation in panel on "Technology: Peer-to-Peer and End-to-End: Copyright and Napster," at Georgetown Law School, Washington, DC. (No notes or transcript).

February 26, 2001: Remarks on "A Day in the Life of Judiciary Committee Staffer," at meeting of Presidential Management Interns at Georgetown University's Governmental Affairs Institute Washington, DC. (No notes or transcript).

November 1, 8, and 15, 2000: Remarks on "Incorporating Public Service Into Your Legal Career," at National Youth Leadership Forum on Law, Washington, DC. (No notes or transcript).

September 24, 2000: Remarks on "What Happens in Conference?" at Georgetown University's Government Affairs Institute, Washington, DC.

June 20, 2000: Participation in panel discussion on "Cybersquatting: The Effect of New TLDs on IP Rights," at U.S. Chamber of Commerce conference, Washington, DC. (No notes or transcript).

February 1, 2000: Remarks on "An Insider's View Of Legislative History" at George Washington University Law School, Washington, DC. (No notes or transcript).

October 27, 1999: Participation in panel discussion on "Cooperation and Competition: What's Next? " at Electronic Commerce Conference sponsored by Cross-Industry Working Team and Electronic Payments Forum, in cooperation with the Financial Services Technology Consortium and Commerce Net, Washington, DC.

March 8, 1999: Participation in panel discussion on "Role of the Congress, the Commission, and the Courts in Sentencing: A Legislative Perspective," at National Sentencing Policy Institute, Washington, DC. (No notes or transcript).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00444 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.394

December 3, 1998: Participation in panel discussion on "Encryption: Law Enforcement Meets Competitive Reality," at American Jewish Committee, Washington, DC. (No notes or transcript).

November 17, 1998: Participation in panel discussion on "Government Information Policy Issues Before Congress: Nazi War Crimes Disclosure Act, Implementation of EFOIA Amendments, and Declassification," at conference of American Society of Access Professionals (ASAP), Washington, DC. (No notes or transcript).

February 10, 1998: Participation in panel discussion on "Action Items for the Senate Judiciary Committee," at Fraternal Order of Police Annual Conference, Washington, DC. (No notes or transcript).

December 1, 1997: Remarks on S. 10, juvenile justice legislation to U.S. Conference of Mayors, Task Force on Youth Violence, Washington, DC. (No notes or transcript).

April 4, 1997: Remarks on "The Federal Role in Combating Crime," at the Fulbright Foreign Student Washington Seminar, Washington, DC.

December 13, 1996: Remarks on "Implementation of the E-FOIA Amendments," at American Society of Access Professionals' (ASAP) Annual Symposium, Washington, DC. (No notes or transcript).

September 20, 1996: Remarks on "Passage of Electronic Freedom of Information Act Amendments," at Society of Professional Journalists National Convention, Washington, DC. (No notes or transcript).

April 10, 1995: Remarks on "Progress on the E-FOIA Amendments," at conference of American Library Association's Government Documents Round Table and D.C. Library Association's Government Documents Interest Group, Washington, DC. (No notes or transcript).

February 22, 1995: Remarks on "Hi-Tech Issues Before Congress," at New York City Bar Association, Committee on Science and Law, New York, New York.

October 20, 1994: Remarks on "Electronic Freedom of Information Act Amendments," at conference of American Society of Access Professionals (ASAP), Washington, DC.

June 9, 1994: Remarks on Freedom of Information Act at Department of Justice, Washington, DC.

April 7, 1994: Remarks on Freedom of Information Act to Congressional Youth Leadership Council, Washington, DC.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00445 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.395

December 14, 1993: Remarks on FOIA at Department of Justice, Seminar for FOIA Personnel, Washington, DC. (No notes or transcript).

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

I have searched my files and electronic databases in an effort to locate all media interviews that are responsive to this question. I have located the materials listed below but it is possible there are a few that I have been unable to identify.

David Freed, *The Wrong Man*, The Atlantic Magazine, May 2010.
Ben Smith, *Obama staff will say cu l8r 2 IM*, Politico, Jan. 17, 2009.
Kenneth R. Bazinet and James Gordon Meek, *Obama team eyeing DC lawyer Eric Holder as Attorney General,* New York Daily News, November 18, 2008.
Shane Harris, *Surveillance Standoff,* THE NATIONAL JOURNAL, April 5, 2008 (cover story).
Stroz Friedberg Achieves Safe Harbor Certification Ensuring Data Security Standards for European Union Clients, Computer Technology Journal, February 25, 2008.
Richard Schmitt, *Inquiry May Test House's Legal Shields*, Los Angeles Times, October 9, 2006.
Larry Abramson, *Stolen Laptop with Veterans' Information Returned*, National Public Radio, June 30, 2006.
WUASA-TV, Interview for story on *iPod Slurping and Corporate Security Risk*, April 25, 2006 (I have no transcript or copy of the video of this program).
Ted Bridis, *Experts Say Wiretap Fight May Taint Cases*, Associated Press, December 21, 2005.
David Corn, *The FBI Fails (For Now) to grab Subpoena powers*, The Nation, September 22, 2005.
Ted Bridis, *Fraud reveals workings of Internet Theft*, Associated Press, September 11, 2005.
T.R. Goldman, *The Judiciary Committee's Star Turn*, Legal Times, September 8, 2005.
Nicholas Hoover and Eric Chabrow, *Homeland Security: How Far have We Come*? Information Week, September 5, 2005.
Mark Mueller, *To Catch a monster, using anti-terror law*, The Newark Star-Ledger, August 14, 2005.
Timothy L. O'Brien, *The Rise of Digital Thugs*, The New York Times, August 7, 2005.
Scott Orr, *How acts of terror changed the law of the land*, The Newark Star-Ledger, July 10, 2005.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00446 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.396

Judiciary panel no 'shrinking violets'; Senate committee charged with vetting Supreme Court nominee polarized by nature, Grand Rapid Press (Michigan) July 3, 2005, at A4.

Chuck McCutcheon, *Judiciary Committee: Polarized by its Nature*, Newhouse News Service, July 1, 2005.

Tom McGinty and Carrie Mason-Draffen, *For bosses no option but to report*, Newsday, June 29, 2005.

Ian Marquand, *Tips to help government officials work for you,* The Quill, April 2005.

James Meek, *Patriot Act Power Cut*, New York Daily News, March 14, 2005.

Justin Rood, *Arlen Specter, FBI's Bane, Likely to Bring Fireworks to Judiciary Committee Chair*, CQ, January 11, 2005.

James Gordon Meek, *Ex-Reno aide is face of Bush terror team*, Daily News, August 15, 2004.

Margaret Reed, *Protecting the Infrastructure*, Federal Computer Week, August 2, 2004.

Larry Abramson, *President Bush Promotes the Patriot Act in Buffalo*, National Public Radio, April 20, 2004.

Charlie Savage, *GOP Downplays Reading of Memos*, The Boston Globe, January 23, 2004.

Christopher Schmitt and Edward Pound, *Keeping Secrets: The Bush Administration is Doing the public's business out of the public eye,* U.S. News & World Report, December 12, 2003.

Larry Abramson, *The Patriot Act Continues*, National Public Radio, October 20, 2003.

Eric Licthblau, *Two Years Later: The Context, Counter Terror Proposals are Hard to Sell*, New York Times, September 11, 2003.

Tim Funk, *Lawyerly Questioning Trips Bush Nominee at Hearing,* Charlotte Observer (North Carolina) August 17, 2003, at 10A.

Tim Funk, *Trial Skills count at Impeachment*, Charlotte Observer (North Carolina), August 17, 2003, at 11A.

Tim Funk, *Novice Made Quick Mark In National Politics,* Charlotte Observer (North Carolina), August 17, 2003, at 1A.

Elsa Wenszel, *FBI worries US privacy watchdogs,* Dow Jones Factiva, IDG Data, July 14, 2003.

Elsa Wenszel, *Who's Watching you Surf?* PC World, July 4, 2003.

Hill People: The Senate Judiciary Committee, National Journal, June 21, 2003.

Shannon McCCaffrey, *Federal Warrant Approval A Record,* Charlotte Observer (North Carolina), May 3, 2003, at 6A.

Ted Bridis, *U.S. Court Approved 1,228 Special Terror Warrants Last Year*, Associated Press, May 1, 2003.

Eric Lichtblau, *Republicans Want Terror Law Made Permanent*, New York Times, April 9, 2003.

Ted Bridis, "*Justice Department Lifts FBI Database Limits*," Associated Press, March 28, 2003.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00447 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.397

Ted Bridis, "*Limits Lifted on Fugitive, terrorist Data in FBI Criminal Database*," Associated Press, March 24, 2003.
US Justice Dept Loosens Limits On FBI Crime Database, Dow Jones International News, March 25, 2003.
Dan Eggen and Robert O'Harrow, *U.S. Steps up Secret Surveillance*, The Washington Post, March 24, 2003.
Barbara Spector, *Practicing at the Intersection of Law, Policy and Technology*, Bryn Mawr College, Science & Technology Magazine (2003).
Hatch, Leahy to Continue Bipartisan Work on Internet Issues, Washington Internet Daily, December 4, 2002.
Drew Clark, *Intellectual Property: Anti-piracy Debate May Be Tech Industry's; 'biggest Issue'*, National Journal's Technology Daily, December 3, 2002.
Bush Urges Senate to Pass Virtual Child Porn Bill, Washington Internet Daily, October 24, 2002.
Senate Likely to Fast-Track Virtual Porn Bill, Washington Internet Daily, October 3, 2002.
Govt. Imposition of Digital Rights Systems Opposed, Audio Week, November 19, 2001.
Capitol Hill, Washington Internet Daily, November 15, 2001.
ON THE HILL: Leahy Staff Member Criticizes Hollings' Copyright Bill, National Journal's Technology Daily, November 14, 2001.
Brian Krebs, "*Senate to Hold December Hearings on Microsoft Settlement*," Post-Newsweek Business Information Newsbytes, November 14, 2001.
Kathleen Murphy, *Congress To Vote Soon on Several Internet Bills*, Internet World, May 11, 1998.
Debra Gersh Hernandez, *Congress Approves EFoIA*, Editor & Publisher Magazine, September 28, 1996.
Leslie Gevirtz, *Three on trial in bootlegging scheme*, United Press International, May 1, 1989.

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

I have not held a judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___%
civil proceedings:	___%
criminal proceedings:	___%

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00448 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.398

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00449 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.389

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

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

I have not served as a judge.

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

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

On November 29, 2004, following confirmation by the United States Senate, I was appointed by President George W. Bush to be a Commissioner on the United States Sentencing Commission. This appointment was continued by President Bush on December 12, 2006, for the next session of the Congress. On March 5, 2007, following confirmation by the United States Senate, I was appointed by President Bush to a second term as a Commissioner on the United States Sentencing Commission.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have never held a paid or unpaid position with any political party, political campaign organization or election committee.

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00450 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.400

From 1983 to 1984, I served as a law clerk to the Honorable Dickinson R. Debevoise, United States District Judge for the District of New Jersey.

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

I have never practiced law alone. Since 2009, I have worked as a solo legal consultant.

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

1983 & 1985 – 1987
Schulte Roth & Zabel
900 Third Avenue
New York, New York 10022
Summer Associate (1983)
Litigation Associate (1985 – 1987)

1987 – 1993
U.S. Attorney's Office for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Deputy Chief, Narcotics Section (1990 – 1993)
Assistant U.S. Attorney (1987 – 1993)

1993 – 2003
United States Senate, Committee on the Judiciary
Washington, D.C. 20510
General Counsel (1997 – January 2003)
Senior Counsel, Subcommittee on Antitrust, Business Rights, and Competition (1995 – 1996)
Senior Counsel, Subcommittee on Technology and the Law (1993 – 1994)

2003 – 2009
Stroz Friedberg
1150 Connecticut Avenue, NW
Washington, D.C. 20036
Executive Managing Director and General Counsel (2007 – 2009)
Partner and General Counsel of Washington, DC Office (2006)
Managing Director and General Counsel of Washington, DC Office (2003 – 2005)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00451 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.401

2004 – Present
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Commissioner

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

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

b. Describe:

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

Following my one-year clerkship with a United States District Court Judge in 1984, I became a litigation associate at the law firm of Schulte Roth & Zabel. At the law firm, I worked on civil matters for the firm's clients, which were generally corporations, including handling discovery-related motions in U.S. District Court, conducting direct examination of witnesses at an arbitration, drafting briefs and memoranda of law, and assisting in oral arguments before various district and appellate courts. In 1987, I joined the U.S. Attorney's Office for the Eastern District of New York. As an Assistant U.S. Attorney and Deputy Chief of the Narcotics Section, I was the lead prosecutor on over one hundred criminal cases, many of which involved multiple defendants and all of which were resolved by verdict or guilty plea. I conducted lengthy grand jury investigations of public corruption among New York City Building Inspector; heroin trafficking by a notorious Chinatown gang, the Flying Dragons; and money laundering by a Colombian cocaine organization, all of which resulted in convictions of the defendants.

In 1993, after moving to Washington, D.C., I worked for Senator Patrick J. Leahy on the staff of the U.S. Senate Committee on the Judiciary. As a Senior Counsel and, later, General Counsel, I provided legal analysis on proposed and pending legislation and issues; crafted legislation and helped to carry out the legislative and oversight agenda of Senator Leahy.

In 2003, I joined the consulting and technical services firm Stroz Friedberg, and established the first regional office of the company. Until March 2009, when I left the firm, I headed the Washington, D.C. office, served on the executive committee of the firm with management

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00452 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.402

responsibilities for the firm as a whole, managed consulting engagements for clients, who were primarily law firms and companies, and also served as in-house general counsel handling general legal affairs for the firm as it grew from two to eleven offices internationally and from a dozen to over 150 employees.

In addition to my work at the firm, from 2004 until the present, I have served as a Commissioner on the United States Sentencing Commission. As a Commissioner, I have voted on numerous amendments to the Guidelines Manual, including those prompted by directives from the Congress, recommended changes in Federal criminal law to the Congress, joined with my fellow Commissioners in presiding at public hearings and conferences on criminal justice issues, and contributed to the direction of research projects and reports on Federal sentencing and related matters.

Since January 2010, I have taught Legal Ethics as an Adjunct Professor at American University's Washington College of Law.

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

In private law practice and as a consultant, my clients were corporations, law firms, a trade association, and occasionally individuals. As a prosecutor, I represented the Federal government in criminal matters.

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

In private practice at Schulte Roth & Zabel, from 1985 to 1987, I appeared in the U.S. District Court for the Southern District of New York occasionally to argue discovery motions, and also assisted counsel in appearances in other federal trial courts and the Court of Appeals for the Second Circuit, primarily in civil matters. As an Assistant United States Attorney, from 1987 to 1993, I appeared regularly in the U.S. District Court for the Eastern District of New York, as well as the Court of Appeals for the Second Circuit, entirely in criminal matters. I did not appear in court while I worked for Senator Patrick Leahy from 1993 to 2003. From 2003 to 2009, as General Counsel for a private firm, Stroz Friedberg, I did not appear in court but supervised outside counsel retained by Stroz Friedberg to represent the firm, including in litigation.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record:
   3. other courts:
   4. administrative agencies:

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00453 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.403

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

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

During the time that I served as an Assistant United States Attorney and Deputy Chief of the Narcotics Section in the U.S. Attorney's Office for the Eastern District of New York, I tried approximately ten jury trials to verdict as the lead prosecutor. I also handled many more criminal cases that resulted in a plea.

i. What percentage of these trials were:
1. jury: 100%
2. non-jury:

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

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

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

a. the date of representation;

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

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

1. United States v. Clemente, *et al.*, 22 F.3d 477 (2d Cir. 1994).
I led a wide-ranging three-year grand jury investigation into widespread corruption within the New York City Department of Buildings by building inspectors and their supervisors across the boroughs of Manhattan, Staten Island, Brooklyn and Queens. The case resulted in the convictions of over 25 building inspectors for extorting payoffs from architects, engineers, builders and others for

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00454 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.404

"expediting" certificates of occupancy (COs) and insuring that paperwork was not "lost" or unreasonably delayed. The intense investigation involved reluctant cooperators and consensual recordings and culminated in a five-week jury trial on Hobbs Act and other charges that resulted in the convictions of nine defendants. Before the trial, one of the defendants sought to kill a cooperating witness by hiring a "hit-man," who cooperated with authorities. The illegal plan was stopped before a witness was harmed. This case uncovered a pervasive and systematic pattern of corruption at the Department of Buildings, and resulted in the arrests of over one-fifth of the inspection force of the construction division of the Department. Importantly, this investigation provided the impetus for local officials to reform Department of Buildings' procedures and management policies to minimize corruption on this massive scale in the future at the Department.

Presiding Trial Court Judge:
Hon. I. Leo Glasser, U.S.D.J., Eastern District of New York

Co-Counsel:
David James, Deputy Chief, Appellate Section
U.S. Attorney's Office, E.D.N.Y.,
221 Cadman Plaza East
Brooklyn, NY 11201,
(718) 254-7000

Opposing Counsel:
Daniel M. Felber, Esq.
99 Wall Street, 21st Floor
New York, N.Y. 10005
Telephone (212) 422-4600

Robert Koppelman, Esq.
585 West End Avenue
New York, NY 10024

Samuel Gregory, Esq.
45 Main Street
Brooklyn, N.Y. 11201
Telephone (718) 222-2992

The Hon. Robert J. Collini, Judge
New York Supreme Court, 13th Judicial District
18 Richmond Terrace
Staten Island, NY 11301
Telephone (718) 675-6650

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00455 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.405

Allen Lashley, Esq.
16 Court St., Rm 906
Brooklyn, N.Y. 11241,
Telephone (718) 875-1128

Charles Ross, Esq.
111 Broadway, Ste 1401
New York, N.Y. 10006
Telephone (212) 616-3030

Martin Adelman, Esq.,
225 Broadway, Suite 1804
New York, NY 10007
Telephone (212) 732-4343

Louis Diamond, Esq.
77 Targee Street
Staten Island, NY 10304
Telephone (718) 448-4800

2. United States v. Eng, 14 F.3d 165 (2d Cir. 1994). From 1988 through 1992, I led the investigation and prosecution of Johnny Eng, who was the head of the Flying Dragons, a violent gang operating in the Chinatown area of Manhattan. He was charged with engaging in a continuing criminal enterprise and running a heroin trafficking operation that used various ingenious methods to smuggle heroin into the United States from 1987 to 1988. Shortly after other members of the Flying Dragons were arrested, the defendant fled the country and was subsequently apprehended in Hong Kong, where he was held in custody from August 1989 until November 1991. Shortly after I traveled to Hong Kong to work with authorities there, he was successfully extradited to the United States to stand trial. Over the course of this investigation, a cooperating defendant was shot at point-blank range in an assassination attempt, but survived. Eng was convicted after a four-week trial in December 1992.

Presiding Trial Court Judge:
Hon. Reena Raggi, then-U.S.D.J., Eastern District of New York

Co-Counsel:
Karen Seymour, Esq. (former AUSA)
Sullivan & Cromwell LLP,
125 Broad Street
New York, NY 10004,
Telephone (212) 558-4000;

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00456 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.406

Catherine Palmer, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000,
New York, NY 10022,
Telephone (212) 906-1335

Opposing Counsel:
Gerald L. Shargel, Esq.
570 Lexington Avenue, 16th floor
New York, NY 10022
Telephone (212) 446-2323

3. United States v. Yu, *et al.*, 697 F. Supp. 635 (E.D.N.Y. 1988). From 1988 through 1992, I led the investigation of a heroin trafficking import and distribution network of a violent gang called the "Flying Dragons," which operated in the Chinatown area of Manhattan. The investigation required the prosecution of low-level associates to obtain cooperation all the way up the leadership chain to the underboss and the leader of the gang, whom I extradited from Hong Kong where he had fled when the success of the investigation became apparent. The gang recruited Chinese women, who were regular customers at gambling parlors operated by the gang and owed gambling debts, to accept boxes of heroin shipped from Hong Kong to help repay their debts. The investigation resulted in the convictions of eight individuals at trial and other associates of the gang, who pleaded guilty and cooperated. The investigation and prosecutions successfully disrupted the heroin trafficking operation of this Chinatown gang.

Presiding Trial Court Judge: Hon. Leonard Wexler, U.S.D.J. Eastern District of New York

Opposing Counsel:

Jay Goldberg, Esq.
250 Park Avenue, Suite 2020
New York, N.Y. 10177
Telephone (212) 983-6800

Gerald B. Lefcourt, Esq.
148 E 78th Street
New York, N.Y. 10021
Telephone (212) 737-0400

Judd Burstein, Esq.
1790 Broadway, Ste 1501
New York, N.Y. 10019,
Telephone (212) 974-2400

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00457 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.407

Richard Ware Levitt, Esq.
148 East 78th
New York, N.Y. 10021
Telephone (212) 737-0400

Bernard H. Udell, Esq.
16 Court Street
Brooklyn, N.Y. 11201
Telephone (718) 596-2410

Charles D. Lavine, Esq.,
30 Vesey Street, 6th Floor
New York, N.Y. 10007
Telephone (212) 608-6650

4. United States v. Carlos Restrepo, *et al.*, 936 F.2d 661 (2d Cir. 1991). From 1988 through 1991, I supervised the successful investigation and prosecution of various aspects of the largest money laundering cell and narcotics distribution cell of the Cali, Columbia cartel ever located up to that time, in the New York area. Under my supervision, agents and police officers assigned to the New York Drug Enforcement Task Force conducted intensive surveillance of various defendants as they moved large loads of cocaine and drug proceeds around Queens, New York. Searches pursuant to warrants resulted in the recovery of $19 million, which was the single largest cash seizure of drug proceeds ever made at that time in the United States. The investigation also resulted in the arrests of ten high ranking associates of the Cali cartel, and records showing the accumulation of $ 44 million in narcotics proceeds between 1988 and 1989. Ultimately, all ten defendants were convicted. Six pleaded guilty to money laundering charges and four were convicted of money laundering and narcotics charges after a four week trial at which I led the prosecution team. For my work on this case, I was awarded the prestigious Attorney General's Director's Award from the United States Department of Justice.

Presiding Trial Court Judge: Hon. Charles P. Sifton, U.S.D.J. Eastern District of New York.

Opposing Counsel:
Hon. William Mogulescu, Judge
Bronx County Supreme Court, Criminal Div.
265 East 161st Street
Bronx, NY 10451
Telephone (718) 618-3000, ext. 1137

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00458 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.408

Emanuel Moore, Esq.
245 East 44th Street, 18th Floor
New York, N.Y. 10007
Telephone (407)957-0600

Frank Mandel, Esq.
16 East 34th Street
New York, N.Y. 10016
Telephone (917) 358-6874

James Cohen, Esq.
140 W 62nd Street
New York, NY 11241
Telephone (212) 929-7500

Vincent F. Siccardi, Esq.
125-10 Queens Blvd.
Kew Gardens, NY 11415
Telephone (718) 261-7660

5. United States v. Campino, *et al*., 890 F.2d 588 (2nd Cir. 1989), *cert. denied*, 110 S. Ct. 1787 (1991). From 1987 through 1992, I supervised the investigation into a narcotics operation in Queens that led to the arrest and conviction of senior-level Colombian traffickers. At a jury trial, I presented evidence of narcotics trafficking based solely on the seizure, pursuant to search warrant, from the defendants of $93,000 in cash narcotics proceeds, firearms and coded transactions that were proved to be narcotics records, as well as sophisticated electronic surveillance equipment and counterfeit money detector. No cocaine was ever found connected to the defendants, but this case helped demonstrate that senior management in cocaine wholesale operations could not inoculate themselves from narcotics charges by storing the narcotics in a separate place than the money and records of the illegal wholesale operation.

Presiding Trial Court Judge: Judge Sifton, U.S.D.J., Eastern District of New York.

Opposing Counsel:
Jerald Levine, Esq.
73-19 Broadway
Jackson Heights, N.Y.
Telephone (718) 507-6464

Barry E. Schulman, Esq.
16 Court Street, Ste. 2901
Brooklyn, NY 11241
Telephone (718)855-8855

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00459 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.409

Michael A. O'Connor, Esq.
16 Court Street
Brooklyn, NY 11201
Telephone (718) 855-8855

6. United States v. Montoya, 760 F. Supp. 27 (E.D.N.Y. 1991) and United States v. Michael Ahuja, 936 F.2d 85 (2d Cir. 1991). From 1989 through 1991, while in the midst of prosecuting a Cali cartel cell, I discovered that an undercover New York City Police Officer had been approached with a bribe to aid in the escape of four of the defendants incarcerated at the Metropolitan Correctional Center in New York City. The investigation resulted in the identification of additional members of the conspiracy to break the defendants out of jail, all of whom were believed to be high ranking associates of the Cali cartel. These additional targets paid a $50,000 cash bribe to an undercover NYC police officer, made arrangements for the defendants to fly out of the country to Colombia, provided four complete suits of clothing so that the defendants would be appropriately attired when they made their escape, and negotiated a bribe price for the jail-break of two additional members of the narcotics organization, who had been arrested with the seizure of $5.7 million in Houston, Texas. I successfully prosecuted these individuals, two of whom pleaded guilty and one of whom was convicted after a two-week trial. This case was important to demonstrate to Colombian drug cartel members that the American criminal justice system was not easily susceptible to corruption, and that they could not bribe their way out of United States jails and prisons to avoid liability for criminal activity here.

Presiding Trial Court Judge: Judge I. Leo Glasser, U.S.D.J. Eastern District of New York.

Opposing Counsel:
Jorge DeJ. Guttlein, Esq.
291 Broadway, Suite 707,
New York, N.Y. 10007
Telephone (212) 608-7575

Joel Cohen, Esq.
30 W 42nd Street, Suite 1301
New York, N.Y. 10036
Telephone (212) 944-1499

Roger L. Stavis, Esq.
845 Third Ave., 8th Floor
New York, N.Y. 10022
Telephone (212) 935-3131

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00460 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.410

7. Brennan v. United States, 867 F.2d 111 (2d Cir. 1989). From 1988 through 1998, I successfully handled the response to a petition, filed pursuant to 28 U.S.C. 2255, by a corrupt former Justice of the New York Supreme Court to set aside his convictions for racketeering, Travel Act violations and extortion. The defendant had been convicted of agreeing to "fix" cases in exchange for bribes at a trial that occurred before I became an Assistant U.S. Attorney in the Eastern District of New York. Following the Supreme Court decision in McNally v. U.S., 107 S.Ct. 2875 (1987), which rejected an "intangible rights" theory for wire and mail fraud convictions, the defendant's wire fraud convictions were vacated. He then sought vacatur of his remaining convictions. I handled the briefing and argument on appeal. The Second Circuit denied his motion to set aside his remaining convictions.

Presiding Trial Court Judge: Judge Leonard Weinstein, U.S.D.J. Eastern District of New York

Co-Counsel:
Hon. John Gleeson, U.S.D.J., Eastern District of New York
225 Cadman Plaza East,
Brooklyn, New York 11201
Telephone (718) 260-2450

Opposing Counsel:
Arnold E. Wallach, Esq.
New York, New York

8. United States v. Contractor, et al., 926 F.2d 128 (2d Cir. 1991). I supervised an undercover investigation of heroin trafficking by a practicing physician at a medical clinic in Brooklyn, New York. This physician agreed to sell almost a kilogram of cocaine to a confidential informant and undercover agent of the Drug Enforcement Administration. Over the course of the next few months, arrangements were made for the shipment of five kilograms of heroin in meetings that took place in Pakistan and New York. The investigation resulted in the arrest not only of the physician, but also of his heroin suppliers from Pakistan. All three defendants pleaded guilty. .

Presiding Trial Court Judge: Judge Joseph M. McLaughlin, U.S.D.J., Eastern District of New York

Opposing Counsel:
Hon. Robert Stolz, Judge
State of New York, NYC Criminal Ct.
111 Centre Street
New York, NY 10013
Telephone (646) 386-4022

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00461 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.411

Susan Kellman, Esq.
25 8th Avenue
Brooklyn, NY
Telephone (718) 783-8200

Jeffrey Traub, Esq.
100 Church Street
New York, NY 10007
Telephone (212) 732-0208

9. United States v. Huerta, 878 F. 2d 89 (2d Cir. 1989). The defendant in this case arranged for the sale and delivery of one kilogram of cocaine to a Drug Enforcement Administration informant. Although he agreed to cooperate, his efforts were fruitless, incomplete and produced no results. Consequently, the defendant was sentenced to a mandatory minimum of five years' imprisonment. On appeal, he claimed that the statute requiring a government motion for eligibility to be sentenced below the statutory mandatory minimum was unconstitutional as violation of the separation of powers, and on other grounds. I successfully defended, both before the District Court and before the Court of Appeals for the Second Circuit, the constitutionality of the Sentencing Reform Act and the government's prerogative to evaluate the substantiality of cooperation.

Presiding Trial Court Judge: Judge Edward R. Korman, U.S.D.J., Eastern District of New York

Opposing Counsel:
Helen Coady, Esq.
The Legal Aid Society, Federal Defender Services Unit
52 Duane Street
New York, NY 10007
Telephone (212) 417-8700

10. United States v. Sanchez and Reynoso-Nunez, Appeal No. 91-1620 (2d Cir. March 17, 1992). I supervised the investigation and was the lead trial counsel at the jury trial resulting in the convictions of two defendants for the illegal distribution of cocaine. This case was a "dry conspiracy" -- no cocaine was ever found connected to the defendants. They were convicted on the basis of expert testimony and the seizure of $75,000 in cash narcotics proceeds, firearms, ammunition and a ledger containing coded transactions that were proved to be narcotics records. This case helped demonstrate that senior management in cocaine wholesale distribution operations could not inoculate themselves from narcotics charges by storing the narcotics in a separate place than the money and records of the illegal wholesale operation.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00462 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.412

Presiding Trial Court Judge: Judge John Bartels, U.S.D.J., Eastern District of New York

Opposing Counsel:
Ivan S. Fisher, Esq.
251 East 61st Street
New York, NY 10021
Telephone (212) 517-5000

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

As an Assistant U.S. Attorney, at both the trial and appellate levels, I investigated and prosecuted different types of criminal activity, including gang-related crimes, narcotics trafficking, money laundering, and public corruption investigations. I successfully prosecuted the leadership of a Chinatown gang named the Flying Dragons, broke up a large Cali, Colombian money laundering ring on the eve of their plan to transport millions of dollars in cash narcotics proceeds outside the country, and exposed a public corruption extortion scandal among building inspectors that operated across all five boroughs of New York City. As Deputy Chief of the Narcotics Section and part of the management of the U.S. Attorney's Office, I was responsible not only for supervision of my own cases and those of other Assistant U.S. Attorneys in the section, but also for addressing broader issues raised by local Federal Judges, law enforcement agencies, and Main Justice, that had implications for investigations and cases throughout the Office. These issues ranged from reducing delays in execution of court-orders for electronic surveillance to developing mechanisms to manage the large number of drug couriers caught carrying illegal narcotics through the international transit points located within the Eastern District of New York.

My prosecutorial work garnered numerous awards from the Federal law enforcement agencies with which I worked, as well as the prestigious Attorney General's Director's Award for Superior Performance and Special Achievement Awards from my peers within the U.S. Attorney's Office.

For a decade, I served on the staff of the United States Senate Committee on the Judiciary, where I worked for Senator Patrick J. Leahy. My responsibilities included providing legal analysis of the constitutionality and impact of legislation, crafting bills and reports issued by the Judiciary Committee and Conference Committees, organizing hearings, supervising staff in oversight investigations of Federal agencies subject to the jurisdiction of the Judiciary Committee, and coordinating legislative initiatives with staffs of other Members and Executive Branch agencies.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00463 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.413

During my time in private practice, I gained significant civil litigation experience. I have extensive expertise in application of the electronic discovery amendments to the Federal Rules of Civil Procedure and the discovery obligations of counsel. My articles on these topics (and others) have been published in peer-reviewed, leading legal journals, including the Journal of Securities Law, Regulation & Compliance, the New York Law Journal and Digital Discovery and E-Evidence. At Stroz Friedberg, I was a consultant to lawyers dealing with the potentially high-stakes and high-cost issues surrounding electronic discovery, and was called upon to develop legally defensible and reasonable protocols to comply fully with litigation hold requirements for preservation of records and to identify, collect, review, and produce large volumes of electronic documents in response to document demands and for use in internal investigations.

Additionally, during my tenure at Stroz Friedberg, I successfully built a small digital forensics and cyber-security business and gained invaluable experience with the practical, legal, and other issues that inform business decision-making. I believe this experience would be particularly helpful to me if I am confirmed as a judge in guiding parties in civil cases to reach cost-effective resolutions efficiently.

At the same time as performing General Counsel duties at Stroz Friedberg, I managed client matters, many of which required an understanding of applicable legal parameters, developing creative technical solutions and expertly marshalling the facts to reach a successful conclusion. For example, I conducted an investigation on behalf of a client company victimized by defamatory e-mails and computer security breaches, for which investigation I was awarded the Federal Bureau of Investigation Director's Award.

I am currently working alongside U.S. District Judges on the U.S. Sentencing Commission, providing guidance to sentencing judges on appropriate sentences and procedures for the myriad of extant Federal crimes as well as new ones created by recently enacted laws. My role as a Commissioner on the U.S. Sentencing Commission has allowed me to immerse myself in critical current criminal justice issues.

From 2004 until 2009, I was a registered lobbyist for Stroz Friedberg and was registered to lobby for the Recording Industry Association of America and Vivendi Universal – Universal Music Group. I was the contact person within the firm who acted to provide advice on anti-piracy strategies and legislation.

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

From January to May 2010, I taught Legal Ethics at the American University's Washington College of Law, with a focus on the American Bar Association's Model Rules of Professional Conduct and pertinent rules of Federal Civil Procedure.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00464 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.414

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

    I continue to hold common stock in Stroz Friedberg, but have no voting or other management rights or responsibilities in the firm. In addition, I hold a limited number of restricted stock units, which were awarded to me during my employment with the firm and will vest over the next four years.

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

    I plan to fulfill my term, which ends in 2011, as a Commissioner on the United States Sentencing Commission. I have no other plans, commitments or agreements for any other outside employment should I be confirmed and appointed as a U.S. District Judge.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

23. **Potential Conflicts of Interest**:

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

        I would recuse myself from any case based on a client matter in which I was involved or that I supervised at Stroz Friedberg, as well as litigation involving husband's employer. While I would carefully assess each case for any potential conflict or appearance of conflict, and would disclose information or recuse myself as called for by the canons and the law, I am not aware of any other conflict likely to arise when I first assume the position of District Judge, if I am confirmed by the Senate.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00465 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.415

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

If confirmed and appointed as a U.S. District Judge, I will adhere to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all applicable ethical rules, statutes and codes to resolve any potential conflicts of interest. I will review all assigned matters for potential conflicts before taking any action. To help discharge this obligation, I will provide all necessary information, including regular updates, to implement fully the automated screening adopted by the Judicial Council of the District of Columbia Circuit to identify possible financial or other conflicts of interest. In addition, I will participate in training and take advantage of any assistance provided to judges to facilitate my participation in the automated screening, and require my staff to do so as well.

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

Most of my legal career has been spent in public service. I believe that my over twenty years of public service is consistent with Canon 2 of the American Bar Association's Code of Professional Responsibility as well as Rule 6.1 of the American Bar Association's more recently adopted Model Rules of Professional Conduct. Consistent with current ethical rules, I have endeavored over my legal career to participate in activities for improving the law, the legal system and the legal profession. During my service as a federal prosecutor, staff member on the Senate Judiciary Committee and as a Commissioner on the United States Sentencing Commission, I have strived to improve the administration of justice in the highest tradition of the Bar. I have also contributed my time, at no fee, as a Member of a Commission sponsored by the Center on Strategic and International Studies to make recommendations to the new 44th President on cyber-security vulnerabilities and solutions, and through board membership for the Center for Democracy and Technology, to assist this non-profit group in furthering the interest of protecting civil liberties and privacy rights. After leaving full-time government service in early 2003, I have participated extensively in continuing legal education events to improve the profession.

During periods when I worked in the private sector, I also committed my time to *pro bono* matters. For example, early in my career, while I was in private practice at Schulte Roth & Zabel, I worked *pro bono* on an immigration matter representing a Haitian immigrant seeking asylum. More recently, at Stroz Friedberg, I promoted a policy of accepting *pro bono* assignments requiring use of the firm's digital forensic expertise, and piloted the program by assisting, on a *pro bono* basis, Steptoe & Johnson's representation of a U.S. Naval Academy student accused of raping a fellow student.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00466 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.416

25. **Selection Process**:

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

United States Senator Patrick J. Leahy recommended me to the President to fill a vacancy of the U.S. District Court for the District of Columbia. In May 2009, I submitted an application to the Federal Law Enforcement Nominating Commission, which was established by Hon. Eleanor Holmes Norton, United States Representative for the District of Columbia, and thereafter met with the Commission on two occasions, in July and December 2009. Since March 16, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I was interviewed on April 14, 2010, by members of the White House Counsel's Office and the United States Department of Justice. On July 14 2010, I was nominated by the President.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00467 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.417

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Howell, Beryl A.	US District Court for the District of Columbia	06/19/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge--Nominee	☑ Nomination, Date 6/23/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 06/14/2010
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 Sentencing Commission One Columbus Circle, NE Suite 2-500 Washington, DC 20002	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	American University's Washington College of Law
2. Commissioner	United States Sentencing Commission
3. Board Member and Treasurer	Center for Democracy and Technology
4. Consultant	Self-employed
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 4/20/2009	Separation Agreement with Stroz Friedberg
2. 4/1/2009	Consulting Agreement with Recording Industry Association of America (ends3/31/2010)
3. 3/12/2007	StrozFriedberg Equity Incentive Plan/Restricted Stock Unit Award Agreement;no control
4. 1/20/2008	Stroz Friedberg Equity Incentive Plan/Restricted Stock Unit Award Agreement; no control

FINANCIAL DISCLOSURE REPORT Page 2 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	Recording Industry Association of America, consulting	$15,000.00
2.	2010	American University, teaching	$1,996.06
3.	2009	Stroz Friedberg LLC, Salary and stock	$1,019,524.00
4.	2009	Recording Industry Association of America, consulting	$40,000.00
5.	2008	Stroz Friedberg LLC, Salary	$995,579.00
6.			
7.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	National Geographic Television, salary
2.	2009	National Geographic Television, salary
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children, see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 5 of 10

Name of Person Reporting	Date of Report
Howell, Beryl A.	06/19/2010

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (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)
1. Citibank Accounts (savings, money market)	A	Interest	M	T	Exempt				
2. Schwab IRA R/O--Schwab Advisor Cash		None	M	T					
3. Principal Financial Group 401k		None	N	T					
4. American Funds 529 college savings account		None	N	T					
5. MONY whole life insurance policy	A	Interest	J	T					
6. Stroz Friedberg, LLC, common shares and RSUs	G	Dividend	P1	W					
7. Abbot laboratories Common Stock	A	Dividend	K	T					
8. American Express Common Stock	A	Dividend	J	T					
9. Ameriprise Common Stock	A	Dividend	J	T					
10. Apple Inc Common Stock		None	K	T					
11. Barrick Gold Corp Common Stock		None	K	T					
12. Becton Dickinson Common Stock	A	Dividend	J	T					
13. Blackstone common stock	A	Dividend							
14. Boeing Common Stock	A	Dividend	K	T					
15. Celgene Common Stock		None	K	T					
16. Cisco Common Stock		None	J	T					
17. Citigroup Common Stock	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H) (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P) (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
18. Coca Cola Common Stock	A Dividend	K T	Exempt
19. Dish Network Common Stock	A Dividend	J T	
20. Echostar Common Stock	None	J T	
21. Exxon Mobile Stock	A Dividend	J T	
22. Hewlett Packard common stock	A Dividend		
23. Immucor Common Stock	None	K T	
24. Intel Common Stock	A Dividend	K T	
25. IBM Common Stock	A Dividend	K T	
26. McDonalds Common Stock	A Dividend		
27. Microsoft Common Stock	A Dividend	J T	
28. Mylan Common Stock	None	K T	
29. Nokia Common Stock	A Dividend	J T	
30. Potash Corp Common Stock	A Dividend	K T	
31. Praxair Common Stock	A Dividend		
32. Qualcomm Common Stock	A Dividend	J T	
33. RIMM Common Stock	None	J T	
34. Schlumberger Limited Common Stock	A Dividend	K T	

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 10

Name of Person Reporting	Date of Report
Howell, Beryl A.	06/19/2010

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 33-40 of filing instructions.)*

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
35. Smith Int'l Common Stock	A	Dividend	K	T					
36. Time Warner Inc Common Stock	A	Dividend	J	T					
37. Time Warner Cable Common Stock	A	Dividend	J	T					
38. Turner Core Growth Institutional ETF Fund		None	J	T					
39. Turner Midcap Growth Institutional		None	J	T					
40. United Technologies Common Stock	A	Dividend							
41. Vanguard Emerging Markets ETF Fund	A	Dividend	K	T					
42. Walmart Common Stock	A	Dividend	K	T					
43. Bank of America Corporate Bond	A	Interest	L	T					
44. Fairfax County, VA Tax Exempt Bond	A	Interest	L	T					
45. Federal Home Loan Bank Fixed Income Account	E	Interest	L	T					
46. GE Capital Corporate Bond	A	Interest	L	T					
47. Hanover County, VA Tax Exempt Bond		None	L	T					
48. JP Morgan Chase Corporate Bond	A	Interest	L	T					
49. Schwab US Treasury Money Fund	A	Interest	M	T					
50.									
51.									

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

FINANCIAL DISCLOSURE REPORT Page 8 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
S2									
S3									

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

FINANCIAL DISCLOSURE REPORT Page 9 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

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

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Howell, Beryl A.	Date of Report 06/19/2010

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 Beryl A. Howell

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		247	555	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities--see schedule		671	873	Notes payable to relatives		13	869
Unlisted securities--Stroz Friedberg, LLC	3	871	754	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		24	227
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable—primary residence		791	558
Real estate owned-see schedule	2	833	230	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance		11	411				
Other assets itemize:							
Thrift Savings Plan Account		335	247				
Retirement Accounts—see schedule		554	146				
College Savings & Custodial Accounts—see schedule		335	195	Total liabilities		829	654
				Net Worth	8	105	757
Total Assets	8	935	411	Total liabilities and net worth	8	935	411
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged?	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

66720.426

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Federal Home Loan Bank	$ 50,917
Bank of America (Bond)	50,360
GE Capital Corp (Bond)	51,219
JP Morgan Chase (Bond)	51,169
Hanover County, VA (Tax Exempt Bond)	51,226
Fairfax County, VA (Tax Exempt Bond)	52,938
Time Warner Cable	160
Time Warner, Inc.	409
Coca Cola	20,660
Walmart	15,258
Abbott Laboratories	16,520
Becton Dickinson	13,938
Celgene Corp.	16,032
Immucor	17,721
Mylan Inc.	25,648
Cisco	2,748
RIM	14,875
Intel	16,512
IBM	19,267
Microsoft	14,113
Nokia	9,540
Exxon Mobil	12,372
Schlumberger Ltd.	17,844
Smith International	22,126
Boeing	26,152
Barrick Gold Corp.	17,244
Potash Corp.	20,124
Vanguard Emerging Markets ETF	19,435
Apple Inc	25,351
Total Listed Securities	671,878

Real Estate Owned	
Personal residence, with adjacent lot	$ 2,041,730
Second home	791,500
Total Real Estate Owned	2,833,230

Retirement Accounts	
Principal Money Market Inst. Fund	$ 150,351
Dodge & Cox Income Fund	54,944
Russell Lfpt BalSt E Fund	98,166
Principal Large Cap S & P 500 Idx Inst Fund	48,322
Principal MidCap S & P 400 Index Inst Fund	52,446
Schwab IRA R/O—Schwab Advisor cash	144,561
Schwab Cash and Money Market	864
Turner Core Growth Institutional	2,461
Turner Midcap Growth Inst	864
Vanguard Emerging markets ETF	1,167
Total Retirement Accounts	554,146
College Savings & Custodial Accounts	
Schwab Cash and Money Market	$ 2,764
American Express	2,406
Ameriprise Financial Inc	472
Citigroup Inc	225
Coca Cola Company	1,033
Dish Network Corp	416
Echostar Corp	82
Exxon Mobil Corp	2,474
Intel Corp	1,486
Microsoft Corp	513
Qualcomm Inc	1,697
Growth Fund of America	84,759
New Economy Fund	72,665
New World Fund	86,326
Fundamental Investors	74,900
Capital Income Builder	2,977
Total College Savings & Custodial Accounts	335,195

AFFIDAVIT

I, Beryl Alaine Howell do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 14, 2010
(DATE)

Beryl A. Howell
(NAME)

Sworn to and subscribed before me this 14th day of July, 2010.

(NOTARY)

My commission expires August 31, 2012

Senator WHITEHOUSE. Mr. Wilkins, would you like to do the same.

STATEMENT OF ROBERT L. WILKINS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Mr. WILKINS. Thank you, Mr. Chairman. Thank you for the opportunity to appear before you. And I would like to thank Senator Leahy and Ranking Member Sessions, as well. And, Senator Franken, thank you for also appearing here.

It's an honor for me to be here, and it is an honor for me to have been nominated by President Obama, and that's an honor that I will take and consider and seek to uphold as faithfully as I possibly can.

I would like to take this opportunity to introduce my family, asking them to please stand. First of all, of course, my beloved wife, Amy "Amina" Wilkins; my sons, Bakari James Wilkins and Alim Russell Wilkins; my mother, Joyce Wilkins. My mother-in-law and father-in-law, Ernesteen and James Long. Unfortunately, there are two very special family members of mine who were not able to be here with me, my brother, Larry Wilkins and my dear grandmother, Marcella Hayes.

I would like to take this opportunity to thank all of my family members and colleagues, past and present, who have supported me.

Two very special people are here today that I'd like to acknowledge, dear friends of mine, Melvin Elvin Williams and Carl Racine.

I am a 20-year resident of the District of Columbia and very proud of that, but I would be remiss if I didn't also advise this Committee that I was born and raised in Muncie, Indiana. And therefore, it is a distinct honor and pleasure for me to have with me my law partner, but, more importantly, my former Senator who has served this body so honorably for many years, including on this committee, and that's Senator Birch Bayh.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00480 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Robert Leon Wilkins

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

   United States District Judge for the District of Columbia

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

   Venable LLP
   575 7th Street, N.W.
   Washington, D.C. 20004

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

   1963; Muncie, Indiana

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

   1986 – 1989, Harvard Law School; J.D., 1989
   1982 – 1986, Rose-Hulman Institute of Technology; B.S., 1986

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

   May 2002 – present
   Venable LLP
   575 7th Street, N.W.
   Washington, D.C. 20004
   Partner

66720.430

2001 – 2002
Curry & Wilbourn
One Massachusetts Avenue, N.W., Suite 800
Washington, D.C. 20001
Contract Attorney (part-time)

1990 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Contract Attorney (part-time) (2000 – 2002)
Chief, Special Litigation (1996 – 2000)
Staff Attorney (1990 – 1996)

1990
DeFur Voran LLP
400 South Walnut Street, Suite 200
Muncie, Indiana 47305
Law Clerk

1989 – 1990
United States District Court for the Southern District of California
940 Front Street
San Diego, California 92101
Law Clerk to the Honorable Earl B. Gilliam (since deceased)

Summer 1988
Harvard Law School
Placement at Various Addresses
Republic of South Africa
C. Clyde Ferguson Human Rights Fellow

Summer 1987
ACLU National Prison Project
1616 P Street, N.W., Suite 340 (former address)
Washington, D.C. 20036
Summer Law Clerk

Summer 1986
Ball Corporation
1509 S. Macedonia Avenue (former address)
Muncie, Indiana 47302
Summer Engineering Intern

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00482 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.431

Other Affiliations (uncompensated)

2000 – present
Anacostia Coordinating Council
2401 Shannon Place, S.E.
Washington, D.C. 20020
Board of Directors

2006 – present
District of Columbia Access to Justice Foundation
c/o Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004
Director

2002 – 2008
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Vice Chair of Board (2007-2008)
Member of Board of Trustees (2002-2007)

2004 – 2007 & 1994 – 1997
Union Temple Baptist Church
1225 West Street, S.E.
Washington, D.C. 20020
Trustee

2004 – 2004
Proud Legacy L.L.C.
Washington, D.C.
Managing Member

1999 – 2003
National African American Museum & Cultural Complex, Inc.
Washington, D.C. 20020
President of Board of Trustees

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00483 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.432

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

"90 Greatest Washington Lawyers of the Last 30 years," *Legal Times* (2008)
"Washington's Top Lawyers: Education," *Washingtonian* (2007)
"Superlawyers" Washington, D.C. (2007 – 2010)
Honor Alumni Award, Rose-Hulman Institute of Technology (2005)
"Washington's Top Lawyers: Criminal Defense," *Washingtonian* (2004)
"40 under 40 most successful young litigators in America" *National Law Journal* (2002)
Henry W. Edgerton Civil Liberties Award, American Civil Liberties Union Fund of the National Capital Area (2001)
Pro Bono Attorney of the Year, American Civil Liberties Union of Maryland (2001)
"Practitioner of the Year," U. Md. Black Law Students Association (1999)

Law School:
Harvard Civil Rights-Civil Liberties Law Review (Executive Editor, Comments Editor)
C. Clyde Ferguson Human Rights Fellow, Summer 1988

College
Herman A. Moench Distinguished Senior Commendation
Marathon Oil Outstanding Minority Scholarship Award
National Achievement Scholarship

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

Associations
American Bar Association
National Association of Criminal Defense Lawyers
National Bar Association
Washington Bar Association

Committees and Commissions
District of Columbia Access to Justice Commission (Vice-Chair, 2005 – 2008)
District of Columbia Access to Justice Foundation (2006 – present)
District of Columbia Advisory Commission on Sentencing (1998 – 2000)
District of Columbia Bar Foundation Advisory Committee (2003 – present)
District of Columbia Juvenile Justice Advisory Group (1998 – 2000, approximate)
District of Columbia Truth-In-Sentencing Commission (1997 – 1998)

10. **Bar and Court Admission**:

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00484 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.433

Massachusetts, 1990
District of Columbia, 1991

There have been no lapses in membership.

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

Supreme Court of the United States, 1994
U.S. Court of Appeals for the D.C. Circuit, 1996
U.S. Court of Appeals for the Federal Circuit, 2006
U.S. Court of Appeals for the Second Circuit, 2010 (pending)
U.S. District Court for the District of Columbia, 1996
U.S. District Court for the District of Maryland, 2002
U.S. District Court for the Eastern District of Wisconsin, 2008

There have been no lapses in membership.

11. **Memberships**:

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

Lawyers Club of Washington (2007 – present)
Harvard Law School Alumni Association (2005 – present)
American Civil Liberties Union (2003 – present)
Hillcrest Community Civic Association (2001 – present)
Anacostia Coordinating Council, Board of Trustees (2000 – present)
Lambda Chi Alpha Fraternity (1982 – present)
Minority Media & Telecommunications Council (2004)
National Museum of African American History and Culture Plan for Action
Presidential Commission
Chair, Site and Building Committee (2002-2003)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00485 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.434

or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations practiced any such invidious discrimination during my involvement with them and I am aware of no former discrimination. Lambda Chi Alpha, founded in 1909, is a social fraternity that admits only males. I took no action to change that policy.

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

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

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

"Fix Sentencing Guidelines," (co-authored with Rep. John Lewis and Karl A. Racine), The Atlanta Journal-Constitution, December 16, 2004

"A Museum Much Delayed," The Washington Post, March 23, 2003

"Museum Would Advance King's Vision," The Atlanta Journal-Constitution, January 20, 2003

"The Forgotten Museum," July 31, 2002

"How Much Longer Must We Wait?" The Washington Post, August 5, 2001

"Actions Speak More Than Words," (co-authored with Jenkins J. Odoms Jr.), The Baltimore Sun, January 29, 2001

"Stop Racial Profiling," The Baltimore Sun, July 20, 2000

"Setback for D.C. Justice," The Washington Post, June 5, 2000

"Federal Influence on Sentencing Policy in the District of Columbia: An Oppressive and Dangerous Experiment," 11 Fed. Sent. Rptr. 143-148 (Nov./Dec. 1998)

"The South African Legal System: Black Lawyers' Views," 7 TransAfrica Forum 9 (Fall 1990)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00486 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.435

"Black Neighborhoods Becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker than *Brown*," 23 Harv. C.R.-C.L. L. Rev. 415 (1988) (co-author)

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

This list represents the reports, memoranda and policy statements I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued statements with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Annual Report, March 1, 2006 – February 28, 2007, District of Columbia Access to Justice Commission, Washington, DC, April 11, 2007

Report on Racial Profiling of the Working Group of Experts on people of African Descent, United Nations, Geneva, Switzerland, March 9, 2007

"District of Columbia Access to Justice Commission's Fiscal Year 2008 Public Funding Proposal," District of Columbia Access to Justice Commission, Washington, DC, 2007

Annual Report, February 28, 2005 – February 28, 2006, District of Columbia Access to Justice Commission, Washington, DC, April 2006

"District of Columbia Access to Justice Commission Proposal for Public Funding to Ensure Justice for All in the District of Columbia," Washington, DC, March 14, 2006

Memo to Roger Sant – Chairman of the Executive Committee of the Smithsonian Board of Regents, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, January 18, 2006

Letter to Lawrence M. Small – Secretary, Smithsonian Institution regarding National Museum of African American History and Culture, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, April 29, 2005

"Final Site Report," National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, September 2003

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00487 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.436

Letter to Senator Chris Dodd, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, June 6, 2003

"The Time Has Come," Report to the President and to the Congress, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, April 2, 2003

"Preferred Site Analysis Report," National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, DC, December 3, 2002

Letter to Senators Daschle and Lott and Representatives Hastert and Gephardt regarding National Museum of African American History and Culture, National African American Museum & Cultural Complex, Inc., Washington, DC, October 24, 2001

Separate Report of the Public Defender Service for the District of Columbia to the Council of the District of Columbia Regarding the District of Columbia Advisory Commission on Sentencing, Public Defender Service for the District of Columbia, Washington, DC, May 5, 2000

Report of the District of Columbia Advisory Commission on Sentencing, Washington, DC, April 5, 2000

Criminal Sentencing Practices in the District of Columbia, 1993 – 1998, District of Columbia Advisory Commission on Sentencing, Washington, DC, September 30, 1999

"The Commentary and Suggestions Report of the District of Columbia Truth In Sentencing Commission," District of Columbia Truth-In-Sentencing Commission, Washington, DC, March 13, 1998

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

This list represents the testimony, official statements and other communications relating to matters of public policy or legal interpretation that I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued communications with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00488 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.437

April 4, 2007, Public Hearing on Mayor's FY 2008 Budget Request for the Office of the Attorney General, Before the Council of the District of Columbia Committee on Public Safety and the Judiciary, Testimony of Peter B. Edelman, Chairman - D.C. Access to Justice Commission

January 30 – February 1, 2007, "The Problem of Impunity and Accountability Relating to Acts of Racial Profiling," Working Group of Experts on People of African Descent, United Nations, Geneva, Switzerland

July 21, 2006, Letter to the Honorable Douglas H. Ginsburg regarding the 2006 District of Columbia Circuit Judicial Conference

April 11, 2006, Public Hearing on Mayor's FY 2007 Budget Request, Before the Council of the District of Columbia Committee of the Whole, Testimony of Peter B. Edelman, Chairman - D.C. Access to Justice Commission

March 27, 2006, Public Hearing on Mayor's FY 2007 Budget Request, Before the Council of the District of Columbia Committee on the Judiciary, Testimony of Peter B. Edelman, Chairman - D.C. Access to Justice Commission

February 8, 2005, Letter to Representatives Coble and Scott regarding Federal Sentencing Guidelines

September 5, 2003, Letter to the Honorable Colin L. Powell regarding the National Museum of African American History and Culture

July 9, 2003, United States House of Representatives, Committee on House Administration, "H.R. 2205, Legislation to Establish within the Smithsonian Institution a National Museum of African American History and Culture"

February 25, 2003, Letter to Representative Eleanor Holmes Norton regarding the National Museum of African American History and Culture

July 19, 2001, United States House of Representatives, Committee on Government Reform, "The Benefits of Audio-Visual Technology in Addressing Racial Profiling"

May 22, 2001, Congressional Black Caucus Hearing on Racial Profiling, Rayburn House Office Building, Washington, DC

February 13, 2001, Maryland House of Delegates, Committee on Commerce and Government Matters, Testimony concerning House Bill 303, "Law Enforcement Officers – Vehicle Laws – Race Based Traffic Stops"

July 10, 2000, Memorandum of Robert Wilkins to All Councilmembers regarding Sentencing Reform Amendment Act of 2000

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00489 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.438

May 11, 2000, Testimony on Bill 13-696, the "Sentencing Reform Amendment Act of 2000"

March 30, 2000, United States Senate, Committee on the Judiciary, Subcommittee on Constitution, Federalism, and Property Rights, "Racial Profiling within Law Enforcement Agencies"

February 4, 1999, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Public Roundtable on Prisons and the Incarceration of Inmates from the District of Columbia"

January 6, 1999, Transcript, District of Columbia Advisory Commission on Sentencing, Presentation on District of Columbia Truth in Sentencing Study

May 13, 1998, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Home and Community Juvenile Probation Supervision Act of 1998, Bill 12-596"

February 27, 1998, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia on Bill 12-484, The Victim's Rights Establishment Act of 1997"

February 23, 1998, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Truth in Sentencing Amendment Act of 1998, Bill 12-523 and The Advisory Commission on Sentencing Establishment Act of 1998, Bill 12-550"

January 27, 1998, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

January 20, 1998, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

January 6, 1998, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

January 1998, Opening Statement of the Public Defender Service to the District of Columbia Truth-in-Sentencing Commission

December 16, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00490 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.439

December 9, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

December 9, 1997, District of Columbia Truth-in-Sentencing Commission, Materials for Public Comment

November 25, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

November 6, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

November 6, 1997, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Evidence of Battered Spouse Syndrome Act of 1997, Bill 12-15"

October 28, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

October 14, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

September 30, 1997, Transcript, District of Columbia Truth-In-Sentencing Commission Meeting

June 25, 1997, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Bill 12-268: 'The Public Safety and Law Enforcement Support Amendment Act of 1997' and Bill 12-280: 'The Law Enforcement Protection Amendment Act of 1997'"

May 7, 1997, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Bill 12-12, 'The Distribution of Marijuana Amendment Act of 1997'"

May 6, 1997, Letter to the Honorable Jack Evans regarding Parking Meter Breaking and Entering Amendment Act of 1997 – Bill No. 12-96

March 25, 1997, Letter to the Honorable Jack Evans regarding Bill 12-139, The Felony Murder Amendment Act of 1997

March 12, 1997, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Felony Murder Amendment Act of 1997, Bill 12-139"

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00491 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.440

June 27, 1996, "Testimony of Jo-Ann Wallace, Director, Public Defender Service for the District of Columbia Before the House Committee on the Judiciary, H.R. 3565 "Violent Youth Predator Act of 1996"

May 8, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996, Bill 11-622"

May 1, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Sex Offender Registration Act of 1995, Bill 11-386"

April 17, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug Paraphernalia Amendment Act of 1995, Bill 11-466"

April 12, 1996, Letter to the Honorable Eugene Hamilton, Superior Court of the District of Columbia concerning the role of counsel in pre-petition diversion programs

March 7, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Lorton Regulations Approval Temporary Amendment Act of 1996, Bill 11-528"

March 14, 1996, Letter to Committee on the Judiciary in response to inquiry at the March 7, 1996 hearing on Bill 11-528, the Lorton Regulations Temporary Amendment Act 1996

February 15, 1996, Letter to Chairman William Lightfoot regarding Bill 11-475, the Juvenile Detention and Speedy Trial Amendment Act of 1995

January 31, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug Rehabilitation Alternative to Prison Act of 1995, Bill 11-158"

January 3, 1996, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Juvenile Detention and Speedy Trial Amendment Act of 1995, Bill 11-475"

October 25, 1995, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00492 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.441

Concerning the Safe Streets Anti-Prostitution Amendment Act of 1995, Bill 11-439"

October 25, 1995, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Public Oversight Hearing on the Impact of the Joint Gun Initiative Conducted by the Metropolitan Police Department, the U.S. Attorney's Office, and the Bureau of Alcohol, Tobacco and Firearms"

October 11, 1995, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Police Conduct Review Board Act of 1995, Bill 11-428"

September 25, 1995, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug-Related Loitering Act of 1995"

September 21, 1995, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Oversight of Misdemeanor Streamlining Provisions of D.C. Act 10-238, the Omnibus Criminal Justice Reform Amendment Act"

July 26, 1995, Letter to Councilmember Jack Evans regarding "Safe Streets Anti-Prostitution Emergency Act of 1995"

September 29, 1993, Council of the District of Columbia, Committee on the Judiciary, "Comments of the Public Defender Service for the District of Columbia Concerning Bill No. 10-98, The Omnibus Criminal Justice Reform Amendment Act, and Bill No. 10-268, The Misdemeanor Streamlining Amendment Act"

September 29, 1993, Unofficial Transcript of oral testimony regarding Misdemeanor Streamlining Act of 1993, D.C. City Council Judiciary Committee

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

This list represents the presentations I have identified through searches of my files and Internet databases and discussions with others to help refresh my memory. I serve and have served on multiple bar association committees and non-profit

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00493 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.442

boards and in these capacities have frequently participated in public events. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

March 1, 2010, United States District Court for the District of Columbia, Washington, DC, Remarks at the Attorney Admission Ceremony

September 19, 2009, Meeting of the National Museum of the American Latino Commission, National Museum of the American Indian, Washington, DC, "The Work of the National Museum of African American History and Culture Commission"

April 20-24, 2009, United Nations Durban Review Conference, Geneva, Switzerland, Panelist on "Voices" – Sponsored by the United Nations High Commissioner for Human Rights

February 6, 2009, Public Defender Service for the District of Columbia, Washington, DC, Black History Month – "Three Parades and the Quest for Black Citizenship in the Americas"

August 5, 2008, Georgena's Restaurant & Bar, Washington, DC, District of Columbia Democratic Party fundraiser, "Memories of My Friend"

April 11, 2008, District of Columbia Judicial and Bar Conference, Washington, DC, Panel Moderator –"Building a Pipeline to a Diverse Generation of Trial Attorneys" (I have no notes or transcript of the event)

January 21, 2008, Rose-Hulman Institute of Technology, Terre Haute, IN, MLK Day – "A Celebration of His Life and Legacy: A Call to Action, Not Apathy"

May 11, 2007, ALI-ABA Course of Study, Internet Law for the Practical Lawyer, Washington, DC, "Cyber Crimes and Hacking"

March 14, 2007, Georgetown University Law Center, Washington, DC, Guest lecture with Professor James Foreman on criminal procedure issues (I have no notes or transcript of the event)

June 10, 2006, Calvary Missionary Baptist Church, Muncie, IN, Men's Day Program – "Men's Commitment to God, Church and the Community"

April 1, 2006, George Washington University Law School, Washington, DC, Panelist – "Racial and Religious Profiling: Its Definition & Legality in a Post-September 11th World," sponsored by National Association of Muslim Lawyers (I have no notes or transcript of the event)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00494 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.443

February 22, 2006, American Academy of Physician Assistants, Alexandria, VA, Black History Month – The Founding of the National Museum of African American History & Culture (I have no notes or transcript of the event)

November 18, 2005, Criminal Practice Institute, Washington, DC, Panel Moderator – "The War on Terrorism"

November 2, 2005, District of Columbia Bar, Washington, DC, Panelist – "Sentencing in the Post-*Booker* Era"

July 19, 2005, Ameren Corporation, St. Louis, MO, Program Celebrating Diversity

March 16, 2005, Georgetown University Law Center, Washington, DC, Guest lecture with Professor James Foreman on criminal procedure issues (I have no notes or transcript of the event)

November 20, 2004, Criminal Practice Institute, Washington, DC, "Race and Incarceration Since *Brown*"

November 20, 2002, American University, Washington College of Law, Washington, DC, Panelist –"Racial Profiling: Past, Present and Future" – sponsored by the Islamic Legal Forum, Hispanic Law Students Association and Black Law Students Association (I have no notes or transcript of the event)

September 18, 2002, American University, Washington College of Law, Washington, DC, Guest lecture with Professor Cynthia Jones on racial profiling issues (I have no notes or transcript of the event)

April 18, 2002, District of Columbia Judicial Conference, Washington, DC, Panelist on Racial Profiling issues (I have no notes or transcript of the event)

2001, District of Columbia Bar, Washington, DC, Panelist – District of Columbia Bar Continuing Legal Education Seminar on Appellate Litigation (I have no notes or transcript of the event)

December 8, 2000, Harvard Law School, Cambridge, MA, Panelist on Racial Profiling issues during "Race, Police and the Community" Conference (I have no notes or transcript of the event)

June 20, 2000, Public Defender Service for the District of Columbia, Washington, DC, Criminal Defender Training Program Summer Series – The New Sentencing Laws in the District of Columbia

April 2000, District of Columbia Judicial Conference, Washington, DC, Panelist – Unknown Topic (I have no notes or transcript of the event)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00495 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.444

March 3, 2000, Harvard Law School, Cambridge, MA, 35th Anniversary Symposium of the Harvard Civil Rights – Civil Liberties Law Review, Panelist – "Addressing Declining Rights in an Era of Declining Crime," published at 9 Journal of Law and Policy 215-247 (2001)

2000, Delaware State Judicial Conference, Panelist –Racial Profiling issues, (I have no notes or transcript of the event)

November 1999, District of Columbia Criminal Practice Institute, Washington, DC, "Advanced Sentencing" (I have no notes or transcript of the event)

August 8, 1999, American Bar Association, National Meeting, Atlanta, GA, Panelist –"Race and the Criminal Justice System" (I have no notes or transcript of the event)

April 17, 1999, National Bar Association, Judicial Council Seminar, Brooklyn, NY, Panelist –"Driving While Black?: A Study in Search and Seizure" (I have no notes or transcript of the event)

March 27, 1999, American University Washington College of Law, Washington, DC, Annual Sylvania Woods Conference on African Americans and the Law, Panelist –"Media Impact on Racial Stereotypes in the Criminal Justice System," (I have no notes or transcript of the event)

1999, National Conference of State Governments meeting, Panelist – Unknown Topic (I have no notes or transcript of the event)

April 1998, District of Columbia Judicial Conference, Washington, DC, Panelist – Unknown Topic (I have no notes or transcript of the event)

November 1997, District of Columbia Criminal Practice Institute, Washington, DC, "Recent Developments in the Law" (I have no notes or transcript of the event)

January 19, 1997, South Orange, NJ, South Orange Civic Association Celebration of Dr. Martin Luther King, Jr. day, "Civil Rights from the 1960's to the 1990's – Has Anything Really Changed?"

November 1996, District of Columbia Criminal Practice Institute, Washington, DC, "Recent Developments in the Law" (I have no notes or transcript of the event)

November 1995, District of Columbia Criminal Practice Institute, Washington, DC, "Fourth and Fifth Amendment Motions"

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00496 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.445

November 1994, District of Columbia Criminal Practice Institute, Washington, D.C. "Fourth Amendment Motions" (I have no notes or transcript of the event)

October 24, 1988, Harvard University, Cambridge, MA, Introduction of Reverend Jesse Jackson

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

Throughout my career I have had many occasions to be interviewed by various media outlets. I have thoroughly searched my files and Internet databases in an effort to produce as complete a list of these as I could, but it is still possible there are some I was not able to identify or locate.

"Judges Hear Request to See Police Bias Reports," Baltimore Sun, September 30, 2009

"Full Maryland Court of Appeals Hears Racial Profiling Documents Case," Maryland Daily Record, September 30, 2009

"Maryland Court Hearing Held on Racial Profiling Records," Associated Press, September 29, 2009

"Maryland Morning with Sheilah Kast," WYPR, September 29, 2009

"Maryland Court Hears Racial Profiling Case," WAMU, September 29, 2009

"Racial Profiling Records Hearing Held," Fox 5 DC News, September 29, 2009

"Bringing a Case Against Racial Profiling," United Nations radio, May 29, 2009

"Racial Profiling Goes Before Maryland Appeals Court," WAMU radio, May 12, 2009

"Police Records Sought," Baltimore Sun, May 12, 2009

"A Black American Discusses Racial Discrimination in the United States at the Conference Against Racism," United Nations Radio, April 22, 2009

"Voices . . . that should be heard," United Nations Television, April 6, 2009

"For Ousted Juror, A Grand Fight for Answers," Legal Times, March 2, 2009

"The 90 Greatest Washington Lawyers of the Last 30 Years," Legal Times, May 19, 2008

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00497 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.446

"Rose-Hulman Celebrates MLK Day," WTWO – TV, January 21, 2008

"State Police Sued Over Racial-Profiling Records," The Gazette, October 4, 2007

"NAACP, ACLU Sue State Police Over Racial Profiling Records," Southern Maryland Online, September 27, 2007

"ACLU Sues Maryland State Police for Withholding Public Records and Overcharging for Documents Related to 'Driving While Black' Lawsuit," (press release), September 26, 2007

"And Justice For All," Baltimore Sun, July 24, 2007

"Maryland Morning with Sheilah Kast," WYPR, March 28, 2007

"The Front Page with Craig Thompson," WEAA radio, February 27, 2006

"Smithsonian Picks Notable Spot for Its Museum of Black History," New York Times, January 31, 2006

"One Step Closer: Selection of Black History Museum Director and Museum Site Expected in 2005," Diverse: Issues In Higher Education, February 10, 2005

"Mall's Finite Space Holds Infinite Dreams," Washington Post, September 15, 2004

"For African-Americans, A Chance to Draft History," New York Times, June 24, 2004

"Preserving His Heritage," Echoes magazine, Spring 2004

"Museum Caps Life Devoted to Rights," St. Petersburg Times Online Tampa Bay, April 4, 2004

"New Museum Sparks Battle Over Location," Los Angeles Times, December 14, 2003

"Permanent Mary Church Terrell Exhibit Dedicated in Ceremony at Terrell Place in Downtown Washington, DC," (press release), December 4, 2003

"African American Museum Bill Clears Senate," Washington Post, November 21, 2003

"Should the African-American Museum Be Built on Capitol Grounds," Roll Call, September 8, 2003

"African American History Museum Closer to Reality," Crisis magazine, September 1, 2003

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00498 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.447

"Politics on Display in the Fight for a Black Museum," Village Voice, July 9, 2003

"Long Quest, Unlikely Allies: Black Museum Nears Reality," New York Times, June 29, 2003

"Fight Racial Profiling at Local Level, Lawmaker Says," Chicago Tribune, June 29, 2003

"Building Memory," Tampa Tribune, May 26, 2003

"Black History Museum Is Moving Ahead in Congress," Forward magazine, May 16, 2003

"State Settles Bias Case," Baltimore Sun, April 3, 2003

"Maryland Settles Decade-Old Racial Profiling Lawsuit," Fox News Network, April 2, 2003

"Race Profiling Advisory Panel Concern Raised," Baltimore Sun, February 7, 2003

"Long and Winding Road," Baltimore Sun, February 6, 2003

"Approval Urged for Settlement in Race Profiling," Baltimore Sun, February 5, 2003

"Racial Profiling Settlement Up for Vote in Maryland," Baltimore Sun, January 4, 2003

"Maryland State Police Reach Deal on Profiling," Washington Post, January 3, 2003

"Plan for African American Museum Gains Speed," Michigan Quarterly Review, December 21, 2002

"Time Running Out for Black Museum," Tri-State Defender, November 20, 2002

"Robert Wilkins Joins Venable on the Heels of Presidential Commission Appointment," New Voice of New York, June 12, 2002

"Senate Names Robert Wilkins to Presidential Commission Planning the National Museum of African American History and Culture" (press release), May 19, 2002

"Commission Considers Black History Museum," USA Today, February 4, 2002

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00499 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.448

"Panel to Plan Black History Museum," Associated Press, February 3, 2002

"D.C. Sex Offender Law Struck Down," Washington Post, September 23, 2001

"Putting the Brakes on Racial Profiling," BET News, July 19, 2001

"D.C. ACLU Chapters Honor Wilkins for Racial Profiling Work," Muncie Times, July 19, 2001

News Conference on Introduction of Legislation to End Racial Profiling, United States Capitol, Washington, DC, June 6, 2001

"Racial Profiling in Maryland Defies Definition—or Solution," Washington Post, May 16, 2001

"Who Killed Bonny Bakley?" CNN Burden of Proof, May 15, 2001

"Newshour with Jim Lehrer," PBS. March 13, 2001

"Can School Violence Be Stopped?" CNN Burden of Proof, March 8, 2001

"Rally Plans to Refocus the Dream of King," Washington Post, August 24, 2000

"D.C. Plan Would Lift Limits on Sentences," Washington Post, June 6, 2000

"Policing the Police," Black Enterprise, June 1, 2000

"Views Invited on Sentencing in D.C.," The Washington Post, May 11, 2000

"Deep Freeze?" Legal Times, April 3, 2000

"Senate Panel Probes Cops' Racial Profiling," Chicago Sun-Times, March 31, 2000

"Sentencing Shake-Up Looms," Legal Times, March 20, 2000

"Sentencing Shake-up Proposed In District," Washington Post, March 18, 2000

"U.S. Law Enforcement Coming Under Fire For Racial Profiling," CNN Worldview, March 5, 2000

"Black History Museum Has Artifacts but No Building," The Washington Post, January 9, 2000

"Group Seeks African American Museum," The Washington Post, December 16, 1999

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00500 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.449

"Reformed School," The Washington Post, October 12, 1999

"D.C. Commission Nearing Overhaul of Sentencing System," Legal Times, October 4, 1999

"Health Care at Oak Hill Still Found Inadequate," Washington Post, September 17, 1999

"DWB Driving While Black," Ebony magazine, September 1, 1999

"Racial Profiling is Common, Rights Chief Tells Lawyers," St. Louis Post-Dispatch, August 9, 1999

"Racism in Criminal Justice Debated," Associated Press, August 8, 1999

"In Maryland, A Lot of People Say Their Crime Isn't Speed, It's Race—Are the Rules of the Road Written in Black and White," CTV National News, July 18, 1999

"Traffic Violation: Racial Profiling Is a Reality for Black Drivers, But Momentum Is Building to Put on the Brakes," Emerge magazine, June 1999

"At Youth Center, Senators Seek Ideas," Washington Post, April 27, 1999

"Driving While Black, Tracking Unspoken Law-Enforcement Racism," Esquire, April 1, 1999

"Both Sides with Jesse Jackson," CNN, March 21, 1999

"DWB: Driving While Black," U.S. News & World Report, March 15, 1999

"'Driving While Black' No Crime, but ... Race plays role in stops by police, study suggests," The San Diego Union – Tribune, March 14, 1999

"Use of Racial Profiling on Drivers Meets More Legal Challenges," The Dallas Morning News, March 7, 1999

"Fox News Now," Fox News, March 5, 1999

"Firing of N.J. Police Superintendent Adds Fuel to Racial-Profiling Debate," Knight-Ridder/Tribune News Service, March 2, 1999

"Judge Appoints 2 Receivers for Oak Hill's Prison School," Washington Post, September 17, 1998

"Receivership Sought for D.C. Youth Prison," Washington Post, September 11, 1998

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00501 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.450

"Trial Story," Court TV, August 18, 1998

"Newsnight Maryland," Maryland Public Television, Unknown 1998

"Prime Time Justice," Court TV, April 2, 1998

"America in Black and White – Fitting the Profile," ABC News Nightline, March 31, 1998

"Robert Wilkins Votes Against Longer Prison Terms for D.C. Offenders," Washington Informer, February 11, 1998

"Panel Delivers Recommendations on Sentencing City's Violent Offenders," The Washington Post, February 1, 1998

"D.C. Council Urged to Bar Parole for Violent Felons," Washington Times, February 1, 1998

"Sentencing Battle Looms," Legal Times, October 1997

"O'Reilly Report," Fox News Channel, June 2, 1997

In-Person with Maureen O'Boyle, May 20, 1997

"ACLU Says MD Police Stop Too Many Blacks," National Public Radio – All Things Considered, May 7, 1997

"Black Pride and Politics from a Southeast Pulpit," Washington Post, July 7, 1996

"Eye on America with Dan Rather," CBS News, May 22, 1996

"Officials Say D.C. Anti-Gun Program Seems to Be Working" Washington Post, October 26, 1995

"Maryland State Police Settle Lawsuit Over Racial Profiles," Jet magazine, January 23, 1995

"Race-Based Searches Prohibited," Baltimore Sun, January 5, 1995

"Md. Settles Lawsuit Over Racial Profiles," Washington Post, January 5, 1995

"Lawsuit Alleges Bias in Md. Traffic Stops," Washington Post, February 13, 1993

"Pride Swells at Festival in Anacostia," Washington Post, June 2, 1991

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00502 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.451

"THE LAW; Departing Dean Looks Back at Dream and Reality," New York Times, June 23, 1989

"Students Claim Success, End Harvard Protest," Washington Post, May 12, 1988

"Harvard Law Dean Agrees to 7 of 12 Minority Demands as Sit-In Ends," Boston Globe, May 12, 1988

"Harvard Law Students Demand Minority Hiring," Boston Globe, May 11, 1988

"Students Occupy Dean's Office at Harvard Law School," WGBH-TV. May 10, 1988

"The Bottom Line with Kweisi Mfume," WBAL-TV, Baltimore, MD, Unknown date (I have no notes or transcript of the event)

"Evening Exchange with Kojo Nnamdi," WHUT-TV, Washington, DC, Unknown date (I have no notes or transcript of the event)

Vibe magazine, Unknown date (I have no notes or transcript of the event)

Orlando magazine, Unknown date (I have no notes or transcript of the event)

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials? ___%; bench trials ___% [total 100%]

civil proceedings? ___%; criminal proceedings? ___% [total 100%]

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00503 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.452

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have not served as a judge.

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

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00504 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.453

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

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

2005 – 2008
District of Columbia Access to Justice Commission
Appointed by the District of Columbia Court of Appeals

2002 –2006
National Museum of African American History and Culture Plan for Action Presidential Commission
Appointed by the United States Senate.

1998 –2000
District of Columbia Advisory Commission on Sentencing (now known as the District of Columbia Sentencing and Criminal Code Revision Commission)
Pursuant to D.C. Law 12-167, one member of the commission was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

1998 – 2000 (approximate)
District of Columbia Juvenile Justice Advisory Group
Pursuant to administrative order of the Mayor of the District of Columbia, one member of the Advisory Group was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

1997 – 1998
District of Columbia Truth-In-Sentencing Commission
Pursuant to Public Law 105-33, one member of the commission was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00505 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.454

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Jackson for President (1988), Co-chair of Harvard Law School Students for Jackson, provided voluntary assistance with voter registration and canvassing.

Obama for President (2008), Member of Committee of Lawyers for Obama, provided voluntary assistance with fundraising, canvassing and vetting.

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

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

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

August 1989 – August 1990. I served as a law clerk to the Honorable Earl B. Gilliam (since deceased) on the United States District Court for the Southern District of California.

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

From August 2000 to May 2002, I primarily did non-legal volunteer work advocating for the creation of a national museum dedicated to African American history and culture. I also practiced alone as a contract attorney out of my home during that time.

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

September 1990
DeFur Voran LLP
400 South Walnut Street, Suite 200
Muncie, IN 47305
Law Clerk

1990 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Staff Attorney (1990 – 1996)
Chief, Special Litigation (1996 – 2000)
Contract Attorney (part-time) (2000 – 2002)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00506 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.455

2001 – 2002
Curry & Wilbourn
One Massachusetts Avenue, N.W., Suite 800
Washington, D.C. 20001
Contract Attorney (part-time)

2002 – present
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004
Partner

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

I have never served as a mediator or arbitrator.

b. Describe:

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

When I started practicing law in 1990 following my clerkship, my practice consisted exclusively of criminal trial and appellate work. In the mid-1990s, my practice began to include some civil work, primarily in consent decree enforcement, but it remained primarily a criminal practice. From August 2000 to May 2002, my practice was part-time and I worked almost exclusively on civil matters, including civil rights, commercial law, real property and trust and estate litigation matters. Since joining Venable LLP in May 2002, my practice has consisted of white collar criminal defense, intellectual property litigation and complex commercial litigation.

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

From 1990 to 2002, my typical clients were indigent individuals who were facing charges or had been convicted or adjudicated in either the juvenile delinquency or adult criminal justice systems. During that time, I specialized in criminal law, and to a lesser degree, civil rights law. Since 2002, my typical clients have been individuals and companies facing investigation or charges in white collar criminal matters or companies, both large and small, involved in intellectual property or commercial disputes. During this time, I have maintained my specialties in criminal and civil rights law and am developing a specialty in patent litigation.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00507 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.456

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

Since 2002, nearly 100% of my practice has been in litigation, and I have appeared in court frequently. From 1996 to 2002, my practice was approximately 50% litigation and 50% public policy, though I still appeared in court fairly frequently. From 1990 to 1996, my practice was 100% litigation, and I appeared in court very frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 65%
   3. other courts:
   4. administrative agencies: <5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 30%
   2. criminal proceedings: 70%

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

I have tried approximately 25 – 30 cases to verdict or final decision over my entire career, the vast majority during my tenure with Public Defender Service for the District of Columbia. I estimate that of those trials, I was sole counsel in approximately 70% of those cases, chief counsel in approximately 15% and associate counsel in approximately 15%.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury 20%

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

I have represented parties seeking certiorari review in the following matters, serving as the primary author of each petition for writ of certiorari:

District of Columbia v. Jerry M., 738 A.2d 1206 (D.C. 1999), *cert. denied*, 529 U.S. 1118 (2000)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00508 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.457

Nixon v. United States, 736 A.2d 1031 (D.C. 1999), *cert. denied*, 528 U.S. 1098 (2000)
United States v. Smith, 685 A.2d 380 (D.C. 1996), *cert. denied*, 522 U.S. 856 (1997)
In re M.E.B., 638 A.2d 1123 (D.C. 1993), *cert. denied*, 513 U.S. 883 (1994)

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

    a. the date of representation;

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

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

1. 1993 – 2008. *Robert L. Wilkins, et al. v. State of Maryland*, Docket No. 93-cv-00468-CCB, U.S. District Court for the District of Maryland and *NAACP, et al v. Maryland State Police*, Docket No. 98-cv-1098-FPS, U.S. District Court for the District of Maryland. Reported at *Maryland State Conference of NAACP Branches v. Maryland State Police*, 2007 WL 2914913 (D.Md., October 03, 2007); *Maryland State Conference of NAACP Branches v. Maryland State Police*, 454 F.Supp.2d 339 (D.Md. 2006); *Maryland State Conference of NAACP Branches v. Maryland Dept. of State Police*, 72 F.Supp.2d 560 (D.Md. 1999). Judge Catherine Blake and Magistrate Judge Paul Grimm handled the case initially, and then it was transferred to Magistrate Judge James Bredar and Judge Frederick Stamp (sitting by designation from the Northern District of West Virginia).

   The *Wilkins* case was a "racial profiling" civil rights lawsuit that arose out of an incident in which I and three family members were stopped and detained for a search by a drug-sniffing dog by the Maryland State Police while returning from a funeral in Chicago. In 1995, we reached a landmark settlement that required systematic statewide compilation and publication of highway traffic stop and search data by race. In 1998, we filed a new lawsuit on behalf of the Maryland NAACP and several individuals as a putative class action, alleging that the Maryland State Police engaged in "racial profiling" in traffic stops and searches along I-95 in Maryland, and litigation to enforce the settlement agreement in the *Wilkins* case was consolidated with the *NAACP* case. In 2003, the parties agreed to resolve the demands for equitable relief in the *Wilkins* case and the *NAACP* case by entering into another landmark consent decree that required that the Maryland State Police take a number of further actions, including hiring an independent consultant, installing video

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00509 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.458

cameras in its vehicles, requiring an internal investigation of all citizen complaints of racial profiling, assigning a senior officer to review all racial profiling complaints and data, and providing the Maryland NAACP with quarterly reports containing detailed information on the number, nature, location and disposition of racial profiling complaints. The portion of the *NAACP* case involving the requests for damages by individual motorists was settled in April 2008. These cases and the data have been examined and described in thousands of books, scholarly articles and popular media publications and have inspired an Executive Order by President Bill Clinton, legislation in the House and Senate, and legislation in at least twenty-eight states prohibiting racial profiling and/or requiring data collection. I was the lead plaintiff in the *Wilkins* case, but I also participated in the *Wilkins* and *NAACP* cases as co-counsel, assisting the lead lawyers in the case with legal research, litigation strategy, drafting pleadings and settlement negotiations.

Co-counsel were Deborah Jeon, ACLU of Maryland, 3600 Clipper Mill Rd., Suite 350, Baltimore, MD 21211, (410) 889-8555; Jonathan Guy, Orrick Herrington and Sutcliffe LLP, Columbia Center, 1152 15th Street, N.W., Washington, D.C. 20005, (202) 339-8516; John Keeney, Hogan & Hartson LLP, 555 Thirteenth Street, NW, Washington, DC 20004, (202) 637-5750; William Mertens, 7910 Woodmont Avenue, Suite 1430, Bethesda MD 20814, (301) 913-0012. Defendants' counsel were: Maureen Dove, 713 Winans Way, Baltimore, MD 21229-1434, (410) 233-7845; Steven Sullivan, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202, (410) 576-6324; Betty Stemley, Office of the Attorney General, Maryland Transit Administration, Suite 1200, 6 Saint Paul St, Baltimore, MD 21202, (410) 767-3872.

2. 2009 – May 2010. *Kimberly-Clark Worldwide, Inc. v. Tyco Healthcare Group LP*, 635 F.Supp.2d 870 (E.D.Wis. 2009). This was a patent infringement case before Judge William Greisbach.

I represented Kimberly-Clark, which owns a patent for endotracheal tubes with an innovative feature that helps prevent fluid from leaking past the tube's cuff and aspirating into the lungs of intubated patients, thereby helping to prevent those patients from contracting pneumonia. Kimberly-Clark sought a preliminary injunction against Tyco Healthcare, who had recently begun marketing an endotracheal tube in the United States that copied the patented feature. The parties engaged in expedited fact and expert discovery in advance of an evidentiary hearing on the request for a preliminary injunction. Following the hearing, the court ruled that Kimberly-Clark had established a likelihood of success on the merits with its showing that the patent was valid and was being infringed, however the court ruled that Kimberly-Clark would not suffer irreparable harm pending trial and that the public interest would not be served by a preliminary injunction. Subsequently, the case was resolved by settlement, with Tyco agreeing to license Kimberly-Clark's patented technology. I served as lead counsel for Kimberly-Clark.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00510 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.459

Co-counsel: William Coston and Rebecca Lombard, Venable LLP, 575 7th Street, N.W., Washington, D.C. 20004, (202) 344-4000; Daniel Flaherty, Godfrey & Kahn, S.C., 100 West Lawrence Street, Appleton, WI 54911, Phone: 920-830-2800. Opposing counsel: John Desmarais, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, (212) 446-4739.

3. 2002 – 2005. Janssen Pharmaceutica N.V., et al., v. Eon Labs Manufacturing Inc., Docket No. 01-CV-2322 (NG) (MDG), U.S. District Court for the Eastern District of New York. Reported at: *Janssen Pharmaceutica N.V., et al., v. Eon Labs Manufacturing Inc.*, 374 F.Supp.2d 263 (E.D.N.Y. 2004), aff'd, 134 Fed.Appx. 425 (Fed.Cir. Jun. 13, 2005); see also *Janssen Pharmaceutica N.V. v. Eon Labs Mfg., Inc.*, 2003 WL 25819555 (E.D.N.Y. Nov 25, 2003). This was a patent infringement case that was before Judge Nina Gershon. I represented the plaintiff, Janssen Pharmaceutica, the owner of a patent for pharmaceutical beads used in an innovative antifungal medication in a lawsuit against Eon Labs. Eon had received FDA approval to manufacture and market a generic version of the antifungal medication, and Janssen brought suit pursuant to the federal Hatch-Waxman Act to obtain injunctive relief against Eon. Following a bench trial, the court reached a split verdict, rejecting Eon's challenges to the validity of the patent, but also finding that Eon's formulation of the medication did not infringe Janssen's patent. The case was appealed to the Federal Circuit, and the trial court ruling was affirmed. I acted as second chair in the case and assisted with all aspects of the case from discovery, through motions practice, trial and appeal.

   Co-counsel: Vicki Margolis, Senior Counsel, Kimberly-Clark Corporation, 2300 Winchester Road, Neenah, WI 54956, (920) 721-2609. Opposing Counsel: Stanley Lieberstein, St. Onge Steward Johnston & Reens LLC, 986 Bedford Street, Stamford, CT 06905, (203) 324-6155.

4. 2001 – 2003. *Doe No. 1 v. Williams*, 167 F.Supp.2d 45 (D.D.C. 2001), rev'd in part, 2003 WL 21466903 (D.C. Cir. 2003). This matter was before Judge Ellen Segal Huvelle.

   I acted as lead counsel for plaintiffs in class action lawsuit challenging the District of Columbia Sex Offender Registration Act on constitutional and Privacy Act grounds, obtaining temporary, preliminary and permanent injunctive relief in the District Court. While the case was on appeal, the Supreme Court of the United States upheld the sex offender registration statutes of Connecticut and Alaska, and based on those rulings, the U.S. Court of Appeals for the D.C. Circuit reversed the injunctions in part.

   Co-counsel: Ronald Sullivan, Harvard Law School, Pound Hall 414, 1563 Massachusetts Avenue, Cambridge, MA 02138, (617) 496-4583. Opposing counsel: David J. Ball, Jr., Weil Gotshal & Manges LLP, 1300 Eye Street NW, Washington DC 20005, (202) 682-7033, Lisa A. Bell, O'Riordan Bethel Law Firm, LLP, 1314 19th Street, N.W., Washington, D.C. 20036, (202) 822-1720.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00511 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.460

5. 2007 – January 2010. *Newman v. Borders, Inc.*, 257 F.R.D. 1 (D.D.C. 2009); *Newman v. Borders, Inc.*, 530 F.Supp.2d 346 (D.D.C. 2008). This case was before Judge Richard Roberts.

   This case was brought pursuant to 42 USC § 1981, alleging that Ronald Newman was discriminated against while shopping at a Borders bookstore in Washington. Borders filed a motion to dismiss, which was granted in part and denied in part, and the matter proceeded through discovery. The parties reached a confidential settlement of the matter. I represented Borders, serving as co-lead counsel in the case.

   Co-counsel: Craig Thompson, Venable LLP, 750 E. Pratt Street, Suite 900, Baltimore, MD 21202, (410) 244-7605. Opposing counsel: John Relman, Relman & Dane, PLLC, 1225 19th Street, N.W., Suite 600, Washington, D.C. 20036-2456, (202) 728-1888.

6. 2003 – 2008. *Chase v. Public Defender Service*, 956 A.2d 67, 28 IER Cases 967 (D.C. 2008).

   In this case, I represented the Public Defender Service for the District of Columbia in various challenges brought by Carl Chase to his termination from the agency. In a case of first impression, the D.C. Court of Appeals was asked to construe the impact of the passage by Congress of the National Capital Revitalization and Self-Government Improvement Act of 1997 upon the status of the Public Defender Service. The court held that Revitalization Act altered the charter of the Public Defender Service such that its employees were not subject to the same personnel procedures as employees of the District of Columbia government, upholding the agency's right to terminate Mr. Chase. I served as lead counsel in the matter, overseeing the briefing and strategy on appeal and in prior proceedings before an administrative law judge and the District of Columbia Superior Court.

   Co-counsel: John Cooney, Venable LLP, 575 7th Street, N.W., Washington, D.C. 20004, (202) 344-4000. Opposing counsel: Michael Lasley, 1629 K Street NW Suite 300, Washington DC 20006, (202) 508-3690.

7. 1990 – 1994. United States v. Martin. Reported at: *Martin v. United States,* 647 A.2d 1135 (D.C. 1994); *Martin v. United tates.*, 614 A.2d 51 (D.C. 1992); *Martin v. United States*, 606 A.2d 120 (D.C. 1991).

   Mr. Martin was convicted of first-degree murder in the District of Columbia Superior Court, and I represented him in the appeal of the conviction and in subsequent proceedings. This was my very first case with the Public Defender Service, and I wrote the brief and argued the appeal. The D.C. Court of Appeals reversed the conviction, holding that the trial court erred by refusing to grant a mistrial when Mr. Martin's co-defendant pled guilty in the middle of trial and made statements during his guilty plea that were exculpatory as to Mr. Martin. Following the reversal, I was

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00512 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.461

junior counsel in the trial court, where we actively litigated bond review and collateral estoppel motions leading up to his retrial, and I played a lead role in the briefing and argument of the appeals of those issues. Mr. Martin eventually entered an *Alford* plea to voluntary manslaughter.

Co-counsel: Elizabeth Taylor, Zuckerman Spaeder LLP, 1800 M Street N.W., Suite 1000, Washington D.C. 20036, (202) 778-1800, Jamie Gardner, Patton Boggs LLP, 2550 M Street N.W., Washington, DC 20037, (202) 457-6188, and Roy Conn, United States Department of Justice, Civil Rights Division, 601 D Street N.W., PHB, Room 5122, Washington, DC 20004, (202) 514-4164 . Opposing counsel: James Plamondon, Plamdon Enterprises Inc., 4 S McCain Drive, Frederick MD 21703, (301) 695-5051, Steven Durham, Office of the United States Attorney for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514- 7566, and Stacey Sovereign, Marine Spill Response Corp., 220 Spring Street, Suite 500, Herndon, VA 20170, (703) 326-5628.

8. 1995 – 2000. Jerry M. v. District of Columbia. Reported at: *District of Columbia v. Jerry M.*, 738 A.2d 1206 (D.C. 1999), cert. denied, 529 U.S. 1118 (2000).

This matter involved a consent decree entered in the District of Columbia Superior Court in 1986 on behalf of juveniles detained in secure facilities pending trial or following adjudication. I served as co-lead counsel for the plaintiffs, litigating the violation of various consent decree provisions due to overcrowding and inadequate medical care, housing conditions, food and education. I tried two contested civil contempt proceedings to verdict, including a landmark motion to place the school of the Oak Hill detention center school in receivership due to repeated educational failures, particularly violations of federal special education requirements. The Court of Appeals reversed the receivership order.

Co-counsel: David Reiser, Zuckerman Spaeder LLP, 1800 M Street N.W., Suite 1000, Washington D.C. 20036, 202-778-1800, Donna Wulkan, 1020 16th Street NW Suite 602, Washington D.C. 20036, (202) 682-3909 . Opposing counsel: Walter Smith, DC Appleseed Center for Law & Justice, 1111 14th Street NW, Suite 510, Washington D.C. 20005, (202) 289-8007, Richard Love, Office of the Attorney General of the District of Columbia, 441 4th St N.W., Washington D.C. 20001, (202) 724-6635.

9. 1995 – 2002. United States v. Smith. Reported at: *United States v. Smith*, 685 A.2d 380 (D.C. 1996), *cert. denied*, 522 U.S. 856 (1997).

I represented Ms. Smith in a series of cases, including a case in the Superior Court of the District of Columbia charging her with two counts of stalking, two counts of blackmail and three counts of felony threats. This was a landmark prosecution for at least two reasons. First, the case was unique because it was the first blackmail case to be tried in the District of Columbia in at least 20 years. Secondly, the case was unique because it was one of the first prosecutions under the District of Columbia's

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00513 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.462

new stalking statute. Following extensive motions practice and lengthy hearings, Judge Henry Greene granted the defense motions to dismiss the stalking counts on constitutional grounds. Following a trial on the remaining charges, Ms. Smith obtained not guilty verdicts on all counts except one blackmail count, on which there was a hung jury. The government appealed the dismissal of the stalking charges, and the Court of Appeals reversed and reinstated those charges. Ms. Smith eventually pled guilty to a misdemeanor charge. I was co-lead counsel in the case.

Co-counsel: Tanya Chutkan, Boies Schiller & Flexner LLP, 5301 Wisconsin Ave. N.W., Washington, DC 20015, (202) 237-2727. Opposing counsel: Eric Yaffe, Gray, Plant, Mooty, Mooty & Bennett PA, The Watergate, 2600 Virginia Avenue NW, Suite 1111, Washington DC 20037, (202) 295-2222, Michael N. Levy, Bingham McCutchen LLP, 2020 K Street NW, Washington DC 20006, (202) 373-6680.

10. 1995 – 1996. United States v. Gibson, 1995 FEL 001293. This case was before Judge Frederick Weisberg in the Superior Court of the District of Columbia.

I was appointed to represent Mr. Gibson following an incident in which he and another man attempted to rob a taxi driver using an inoperable BB gun. The taxi driver stopped his car in a busy intersection, resisted, disarmed Mr. Gibson, and was fighting with Mr. Gibson when an off-duty police officer in his street clothes came upon the scene. The off-duty officer approached the men, pulled his gun and was pointing it at the men when a police squad car came upon the scene. After exiting the squad car, one of those officers shot the off-duty officer, killing him. Mr. Gibson was arrested at the scene and charged with armed robbery of the taxi driver and felony murder of the off-duty police officer. The case and the incident received a great deal of media attention and scrutiny due to the death of the police officer and the circumstances of the shooting. Following vigorous advocacy, the felony murder charges were dismissed and Mr. Gibson was permitted to plead guilty to armed robbery. I acted as lead counsel in the case, though I was assisted and supervised by co-counsel.

Co-counsel: David Reiser, Zuckerman Spaeder LLP, 1800 M Street N.W., Suite 1000, Washington D.C. 20036, 202-778-1800. Opposing counsel: Thomas Connolly, Wiltshire & Grannis LLP, 1200 Eighteenth Street, N.W., 12th Floor, Washington, D.C. 20036, (202) 730-1300.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00514 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.463

The vast majority of my most significant legal activities have been litigation matters such as those described in response to Question 17. However, I have spent a substantial amount of time from 2003 to the present on a litigation matter that is still pending and that is currently before the U.S. Court of Appeals for the Second Circuit. In that matter, I represent Enron Creditors Recovery Corp. in an adversary proceeding that was originally filed in the United States Bankruptcy Court for the Southern District of New York, seeking to recover $1.1 billion in payments made on commercial paper notes prior to maturity and just six weeks prior to Enron's bankruptcy filing. Enron alleges that, after its financial difficulties became public, the market for its commercial paper collapsed and its commercial paper dealers and note-holders pressured Enron to draw on its $3 billion revolver and to prepay the notes at their accrued par value, which was substantially in excess of their market value. Enron sought to recover the $1.1 billion in prepayments as voidable preferences under the Bankruptcy Code from approximately 200 defendants. Enron has recovered the equivalent of approximately $500 million in settlements, and the case has been resolved against all but three of the defendants, whose motions for summary judgment were granted by the United States District Court for the Southern District of New York. That ruling is on appeal.

In addition, I have been involved in several significant non-litigation legal activities. First, I was involved with the District of Columbia Truth-in-Sentencing Commission and the District of Columbia Advisory Commission on Sentencing, serving as the representative of the Public Defender Service for the District of Columbia on those bodies, which were tasked with making legislative and policy recommendations to the Council for the District of Columbia. Secondly, I was appointed by the United States Senate to serve on the National Museum of African American History and Culture Plan for Action Presidential Commission, and I chaired its Site and Building Committee. In addition to studying various policy and administrative issues, this Presidential Commission addressed legal issues relating to subjects such as governance of federal agencies and the Smithsonian, appropriations and fundraising, and building on the National Mall. The Presidential Commission also drafted proposed legislation and made recommendations to Congress. Finally, I have extensive past involvement with the legal issue of racial profiling, as I have been invited to provide testimony or participate in panel discussions in numerous meetings on the subject, including before the United States Senate, the United States House of Representatives, the United Nations, the American Bar Association, and various other organizations.

I have not engaged in lobbying activities.

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

I have not taught any courses. I occasionally have spoken to a class as a guest lecturer, and I have helped supervise and teach at trial advocacy workshops.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00515 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.464

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

    I am currently an equity partner with Venable LLP. As such, I have made an equity investment in the firm, and I share in the profits of the firm. If confirmed and appointed to the bench, I would resign from the Venable partnership, and it is my understanding that within a year my capital contribution would be returned to me (with interest) and Venable would provide a payment for the value of any earnings and profits accrued up to the date of my resignation. In addition, Venable would undertake the ministerial duty of assisting me with "rolling over" my Venable retirement accounts to another account of my choosing.

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

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my time with the court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        Due to my partnership with Venable LLP, I would anticipate a need to recuse myself from certain litigation involving Venable LLP. Thus, if confirmed, I would anticipate recusing myself from 1) cases in which Venable LLP is either a

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00516 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.465

party or counsel for a party and the litigation arose prior to my departure from the firm, 2) cases involving matters in which I may have played some role in the past, and 3) cases involving a former client with whom I had a long-standing relationship or about whom I gained confidential information or knowledge that may be potentially relevant to the litigation. In addition, I would consider and disclose, as appropriate, any other relationships with the parties or counsel in all matters and recuse myself as appropriate. Parties, 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 nominated would include family members, relatives, close friends, former clients, former partners, or matters pending in any law firm in which I was formerly associated. In addition, I would recuse myself from any matter that was pending in the Public Defender Service for the District of Columbia during my time of service in that office.

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

I will handle all matters including actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

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

I have actively served the disadvantaged throughout my entire legal career. During my 10-year tenure with the Public Defender Service for the District of Columbia, I served the disadvantaged virtually full-time. From 1992 prior to my joining Venable in 2002, I donated thousands of hours of my time to the *Wilkins v. State of Maryland* and *NAACP et al v. Maryland State Police* cases. Since joining Venable in 2002, I have continued my work on those two cases, and I also have represented clients in other pro bono matters involving child custody, social security disability, asylum, public information act requests and other matters, for a total of more than 1500 hours since 2002.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00517 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.486

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Congresswoman Eleanor Holmes Norton appointed a Federal Law Enforcement Nominating Commission, chaired by Pauline Schneider, to assist her with recommendations for judicial nominations to the United States District Court for the District of Columbia. On May 15, 2009, I submitted an application to that commission, and the commission interviewed me on June 29, 2009. Based upon the recommendation of the commission, I was interviewed by Congresswoman Norton on October 7, 2009. Shortly after May 15, I informed the White House Counsel's Office of my application. I thereafter communicated with the Counsel's Office shortly after June 29, twice in October, and again in late-November 2009.

Since November 25, 2009, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on February 2, 2010. On May 20, 2010, the President submitted my nomination to the Senate.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00518 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.467

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Wilkins, Robert L.	U.S. District Court for the District of Columbia	05/18/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
U.S. District Judge - Nominee	☑ Nomination, Date 5/20/10 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	1/1/2009 to 4/30/2010
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.**	
Venable LLP 575 7th Street, N.W. Washington, D.C. 20004	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	Venable LLP
2. Director	D.C. Access to Justice Foundation
3. Director	Anacostia Coordinating Council
4. Advisory Committee Member	D.C. Bar Foundation
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. TBD, 2010	Venable LLP - Agreement re payment for earned income and interest in law firm
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 05/18/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	Venable LLP	$206,625.00
2.	2009	Venable LLP	$547,719.00
3.	2008	Venable LLP	$529,303.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 05/18/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Everhome Mortgage	Mortgages - Rental Properties	O
2. Industrial Centre FCU	Loan - Non personal auto	K
3. Nelnet	Loan - Educational	J
4. PNC Bank	Loan - Business	N
5. U.S. Government Thrift Savings Plan	Loan - Personal	J

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Wilkins, Robert L.	05/18/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property #1 - Muncie, IN ($151,000)	D	Rent	M	S	Exempt				
2. Rental Property #2 - Muncie, IN ($128,000)	D	Rent	M	S					
3. Rental Property #3 - Muncie, IN ($156,000)	D	Rent	M	S					
4. Rental Property #4 - Muncie, IN ($106,000)	D	Rent	M	S					
5. Rental Property #5 - Muncie, IN ($106,000)	D	Rent	M	S					
6. Rental Property #6 - Muncie, IN ($106,000)	D	Rent	M	S					
7. Rental Property #7 - Muncie, IN ($106,000)	D	Rent	M	S					
8. Rental Property #8 - Muncie, IN ($106,000)	D	Rent	M	S					
9. Met Life - Variable Universal Life Ins.									
10. - Multi Manager Interest Bearing Acct	C	Int./Div.	L	T					
11. Cabrillo FCU Accounts	A	Int./Div.	K	T					
12. Justice FCU Accounts	A	Int./Div.	J	T					
13. IRA #1 - Charles Schwab Funds	B	Int./Div.	M	T					
14. - CRM Small Cap Value Inv. Fund									
15. - American Funds EuroPacific Gr R5									
16. - PIMCO Total Return Instl Fund									
17. - Schwab Stable Value 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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 05/18/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-59 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date Month - Day	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
18. - Vanguard Total Bond Market Index Fund									
19. IRA #2 - ING Plans		None	L	T					
20. - SSgA Target Retirement 2030 Fund									
21. - Ridge Worth Funds									
22. Engraving & Printing FCU Account	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 05/18/2010

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

III. B. - Spouse is a federal government employee.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 05/18/2010

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 Robert L. Wilkins

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		40	000	Notes payable to banks-secured		15	145
U.S. Government securities-U.S. Savings Bonds			200	Notes payable to banks-unsecured		420	589
Listed securities-see schedule		298	889	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-see schedule	1	258	369
Real estate owned-see schedule	1	558	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		73	527				
Other assets itemize:							
Venable Capital Account		405	000				
Thrift Savings Plan		176	593				
				Total liabilities	1	694	103
				Net Worth		958	106
Total Assets	2	652	209	Total liabilities and net worth	2	652	209
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	
CRM Small Cap Value Inv. Fund	$19,987
American Funds EuroPacific Gr R5	20,702
PIMCO Total Return Instl Fund	143,877
Vanguard Total Bond Market Index Fund	6,338
Schwab Stable Value Fund	56,480
SSgA Target Retirement 2030 Fund	43,802
RidgeWorth Funds	7,703
Total Listed Securities	$298,889
Real Estate Owned	
Personal residence	$ 593,000
Rental Property #1	151,000
Rental Property #2	128,000
Rental Property #3	156,000
Rental Property #4	106,000
Rental Property #5	106,000
Rental Property #6	106,000
Rental Property #7	106,000
Rental Property #8	106,000
Total Real Estate Owned	$1,558,000
Real Estate Mortgages Payable	
Personal residence	$ 552,086
Rental Property #1	90,524
Rental Property #2	87,756
Rental Property #3	88,399
Rental Property #4	87,995
Rental Property #5	87,995
Rental Property #6	87,995
Rental Property #7	87,635
Rental Property #8	87,984
Total Mortgages Payable	$1,258,369

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00526 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.475

AFFIDAVIT

I, **ROBERT LEON WILKINS**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/19/2010
(DATE)

Robert L. Wilkins
(NAME)

Donna C. Pieper 5/19/2010
(NOTARY)

Donna C. Pieper
Notary Public, District of Columbia
My Commission Expires 6/30/2014

Senator WHITEHOUSE. We are delighted to have Senator Bayh with us and back in this chamber again and we will be very sad when his son, Evan, goes on to other accomplishments and leaves us at the end of this term.

I have been very honored to serve with Evan. We serve on the Intelligence Committee together. And the Bayh family, father and son, have left a very distinguished record in this body and we are honored that he is here.

Senator BAYH. Thank you, Senator.

Senator WHITEHOUSE. Now, I gave you a preview of the previous nominee's testimony.

I think that it is an important step when people move from their private lives to wear the robes and as we wear the robes and assume the responsibilities, the lifetime responsibilities of a United States district court judge.

We have a certain amount of jousting back and forth on this Committee about activism and who does it, but I do think that underneath the jousting about an important constraint around the activities of a lifetime appointed judge, and it's a useful part of the hearing process to reflect that and to give you an opportunity to comment on it.

The way that I say it is that judges must respect the role of Congress, the elected representatives of the American people; that they must decide cases based on the law and the facts and nothing else; that they not prejudge any case, but make sure that any person coming before them, gets a full and complete hearing, irrespective of their wealth or lack of it, power or lack of it; that they must respect precedent, like it or not; and that they must limit themselves to the question the court has fairly presented.

Those are constraints that help define and protect the judicial function in this country, and I hope that you will both agree that they are ones that you will abide by as United States district court judges.

Ms. HOWELL. Yes, Chairman Whitehouse. I can unequivocally say that those are principalities that I would abide by, would I be lucky enough to be affirmed as a district court judge.

Senator WHITEHOUSE. Mr. Wilkins.

Mr. WILKINS. Thank you, Senator. I think that those are all excellent guideposts that I would certainly also affirm that I would try to maintain and abide by during my tenure, if I am so fortunate as to be confirmed.

Senator WHITEHOUSE. Very good. I appreciate that.

Senator Franken.

Senator FRANKEN. I probably would not be a good judge because I do not agree with any of that.

[Laughter.]

No. I actually completely agree with it. It was a joke from my last thing I used to do.

Ms. Howell, you got a pretty decent intro from our chairman.

Ms. HOWELL. I would agree with that.

Senator FRANKEN. That was really pretty amazing. So I really do not have much to ask you, other than I am really curious about the corrupt building inspectors you prosecuted. Could you tell me how

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00528 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

they were corrupt and exactly what they were doing? How many were there?

Ms. HOWELL. I successfully convicted about 20 of them across different boroughs in the metropolitan New York City area, and their MO, modus operandi, was to extort payoffs before they would issue a certificate of occupancy to people who usually were quite desperate for their C-of-Os, certificates of occupancy, in order to move into their buildings.

Senator FRANKEN. So what does that mean? Why did they—a certificate of occupancy means they could not move in until they got it.

Ms. HOWELL. Owners of the buildings could not actually start using and occupying their building until they were issued a certificate of occupancy by the New York City building inspector.

Senator FRANKEN. And the building inspector basically was saying this building is sound enough to be occupied; is that what the certificate of occupancy is?

Ms. HOWELL. Essentially, yes. And the building inspectors would not issue the certificate of occupancy unless they had received a payoff.

Senator FRANKEN. And how long did they go to jail for?

Ms. HOWELL. Approximately 3 years.

Senator FRANKEN. Seems fair. Mr. Wilkins, you have worked with indigent clients as a public defender and you have served on the D.C. Access to Justice Commission to expand access to legal services for poor people.

I think that equal access to justice is absolutely necessary for a fair justice system. What will you do as a judge to ensure that everyone who comes in your courtroom has equal access to justice?

Mr. WILKINS. Thank you, Senator. I think that as a judge on the U.S. district court, you have to be mindful of your obligation to make sure that justice is blind and that justice is equal and that a person who perhaps doesn't have all of the resources isn't affected unfairly on the merits because of that. And so I would try to be mindful of those issue as I was issuing my—as I would rule on particular matters.

And I note that in the District of Columbia, there is a process by which judges can appoint counsel to the pro se matters, where the plaintiffs may have meritorious cases or potentially meritorious cases that need to be explored with competent counsel and that the judges often times work with the legal community to get them to take those cases, and I would certainly applaud and support that effort.

Senator FRANKEN. So that is the judge appointing a lawyer for a plaintiff.

Mr. WILKINS. I believe that there is a process by which the court can refer a matter and seek to encourage counsel to take the case. He can't actually, I don't believe, appoint counsel. But firms sign up and agree to take cases as they are referred.

Senator FRANKEN. Well, I applaud the work that you have done and I congratulate you both on these nominations. Congratulations.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Franken.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00529 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

I join Senator Franken in congratulating you on the worthy academic and service careers that have prompted President Obama to nominate you for this extraordinary office, and I wish you every success as we go forward.

As I said earlier, there is an unfortunate situation on the Senate floor right now; that people who come out of this Committee with unanimous support of the Committee nevertheless seem to fall into months of quicksand, but without prejudging how the Committee hearing will go, I hope and expect that it will be uneventful and that we will be able to get you through the floor and on to what I hope will be very distinguished careers at the bench.

I congratulate both of you, I congratulate your families.

The hearing will remain open for an additional week, the record of it will, if anyone wishes to add any further materials.

But with no more business before the committee, the hearing is adjourned.

[Whereupon, at 3:23 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00530 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

QUESTIONS AND ANSWERS

Responses of Beryl A. Howell
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **According to a May 2009 presentation you gave at the 18th Annual National Seminar on the Federal Sentencing Guidelines, only roughly 40% of sentences handed out by the D.C. District Courts are within the federal sentencing guidelines. Of course, that means that around 60% of all sentences are departures from the guidelines. If you are confirmed as a District Judge, you will be among the judges within the D.C. District Court imposing sentences.**

   a. **Do you agree that the sentencing guidelines, if applied properly and followed faithfully, can go a long way to assure predictability and uniformity in sentencing?**

      Response: Yes.

   b. **I recognize a substantial number of the downward departures in the District of D.C. are requested by the government; however, if you are confirmed, do you think you would conclude the sentencing guidelines got it wrong more than half the time?**

      Response: Should I be confirmed as a District Court Judge for the District of Columbia, I would adhere to a three-step sentencing process, in accordance with the policy statements of the U.S. Sentencing Commission and consistent with the directions of the U.S. Supreme Court. Specifically, first, I would determine correctly the applicable guideline range. *See* 18 U.S.C. § 3553(a)(4); *Rita v. United States*, 551 U.S. 338, 347-48 (2007) (a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall v. United States*, 552 U.S. 38, 49 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark."). Second, I would consider whether policy statements or commentary in the Guidelines Manual warrant consideration in imposing sentence. *See* 18 U.S.C. § 3553(a)(5). Finally, I would consider the factors set forth in 18 U.S.C. § 3553(a), taken as a whole, to determine the appropriate sentence in each individual case. As part of the process, I would consider fully and fairly the arguments made by the government and defendant, and explain the reasons for the sentence imposed.

2. **On April 30, 2008, you gave a presentation at the White Collar Women's Lunch entitled "Data Detours: E-Discovery and the EU Data Protection Directive." In that presentation, you discussed the effect European law has on discovery in cases involving multinational corporations. I recognize your presentation was about the practical consequences of foreign law, not the interpretation of American law. However, do you believe the multinational nature of the business environment**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00531 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.477

makes it permissible for American judges to take foreign law into account when determining the meaning of America's laws and Constitution?

Response: No. Consideration of foreign law is not appropriate in interpreting the meaning of domestic law and the U.S. Constitution, unless such consideration is required by statute or the Constitution, or controlling precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the District of Columbia Circuit.

3. **During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: I am honored that President Obama nominated me to the position of District Court Judge for the District of Columbia and that my record of educational and professional achievements met his criteria.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe empathy should play in a judge's consideration of a case?

Response: In consideration of a case, a district court judge should find the relevant law from the text of the statute or the Constitution and binding precedent from the Supreme Court and appellate courts, determine the facts fairly from the evidence presented by the parties, and then apply the law to the facts, with clear articulation of the findings of fact and conclusions of law to the parties. Empathy does not play a role.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00532 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.478

i. If so, under what circumstances?

Response: Not applicable.

e. Following Justice Stevens' retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?

Response: Judges should base their decisions solely on a diligent application of the law to fairly evaluated facts that are presented by the parties.

4. Please describe with particularity the process by which these questions were answered.

Response: I prepared my responses after careful consideration of each question and any relevant legal issues raised. I discussed my responses with representatives of the Department of Justice and requested that my responses be transmitted to the Committee.

5. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00533 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.479

Responses of Beryl A. Howell
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Tom Coburn, M.D

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: The Constitution embodies principles that district courts are called upon to apply to specific factual situations, guided by the text of the Constitution, the historical record reflective of the purpose and intent of the provision at issue, and binding precedent from the Supreme Court and appellate courts. While the factual situations may change, the Constitution does not.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: In context, Justice Brennan's quoted statement from his October 12, 1985 speech at Georgetown University titled "Constitutional Interpretation," is immediately followed by his statement that: "*Thus, for example, when we interpret the Civil War Amendments to the charter—abolishing slavery, guaranteeing blacks equality under law, and guaranteeing blacks the right to vote—we must remember that those who put them in place had no desire to enshrine the status quo. Their goal was to make over their world, to eliminate all vestige of slave caste.*" Justice Brennan appears to be suggesting that interpretation of the Constitution should take into account the original purpose of the Constitutional provision at issue. I believe that when presented with a case that requires application of the Constitution to a specific factual situation, a district court judge must be guided by the text of the Constitution, the historical record reflective of the purpose and intent of the provision at issue, and binding precedent from the Supreme Court and appellate courts.

3. **Do you believe judicial doctrine rightly incorporates the "evolving understandings of the Constitution forged through social movements, legislation, and historical practice"?**

   Response: No. In applying the Constitution to a specific factual situation, a district court judge must be guided by the text of the Constitution, the historical record reflective of the purpose and intent of the provision at issue, and binding precedent from the Supreme Court and appellate courts.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00534 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.480

4. **Do you believe empathy is "an essential ingredient for arriving at just decisions and outcomes" and should play a role in a judge's consideration of a case?**

Response: In consideration of a case, a district court judge should find the relevant law from the text of statute or the Constitution and binding precedent from the Supreme Court and appellate courts, determine the facts fairly from the evidence presented by the parties, and then apply the law to the facts, with clear articulation of the findings of fact and conclusions of law to the parties. Empathy does not play a role.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

Response: Whether a particular transaction involving the exchange of money would be subject to Congress's Commerce Clause power would depend on whether the transaction falls within three categories of activity identified by the Supreme Court as covered by the Clause: namely, the channels of interstate commerce; instrumentalities of, or persons or things in, interstate commerce; and activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

   a. **In light of the Court's Commerce Clause jurisprudence, if the government can mandate that every man, woman, and child purchase a health insurance policy, can the federal government require citizens to join a gym (and therefore lower national health care costs)?**

   Response: As noted in the response above, the Supreme Court has set out a framework for determining whether federal regulations fall within the scope of authority vested in Congress by the Commerce Clause. A federal regulation requiring citizens to join a gym would be subject to analysis under this framework.

      i. **If not, what in the Constitution prevents this?**

      Response: The powers granted to Congress under Article I of the Constitution are enumerated, with limits on their scope, as well as bounded by the protections in the Bill of Rights and other constitutional amendments.

      ii. **In a recent report discussing the constitutionality of the individual mandate, the Congressional Research Service (CRS) stated: "whether Congress can use its Commerce Clause authority to require a person to buy a good or service and whether this type of required participation can be considered economic activity" is "a novel issue." Do you agree with CRS that this is a novel issue for the courts to decide?**

      Response: In view of the recent enactment of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (2010), courts

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00535 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.481

have yet to determine the constitutionality under the Commerce Clause of section 1501, the Minimum Essential Coverage Provision. To do so, courts will analyze the statute under the framework provided by the Supreme Court.

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: In *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), the Supreme Court held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. The Supreme Court expressly noted in *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020 (2010), in applying the Second Amendment protection to the States, that the holding in *Heller* "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'" The currently recognized limitations on the individual Second Amendment right are those expressly noted by the Supreme Court; whether any additional limitations apply may be resolved in future cases.

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: The Supreme Court has expressly noted that some limitations exist on the scope of the Second Amendment right but not as narrowly as this question suggests. Whether any additional limitations apply may be resolved in future cases.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: In evaluating challenges to sentences, including capital punishment, brought under the Eighth Amendment to the Constitution, the Supreme Court has looked beyond historical conceptions of whether a punishment is cruel and unusual to "the evolving standards of decency that mark the progress of a maturing society." *Graham v. Florida, 130 S. Ct. 2011, 2021 (2010) (quoting Trop v. Dulles*, 356 U.S. 86, 101 (1958)(plurality opinion)). Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the Court of Appeals for the District of Columbia Circuit.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00536 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.482

Response: In explaining the Eighth Amendment's prohibition on infliction of cruel and unusual punishments, the Supreme Court has stated that the "standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008). Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the Court of Appeals for the District of Columbia Circuit.

b. How would you determine what the evolving standards of decency are?

Response: Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the Court of Appeals for the District of Columbia Circuit.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court has held that the death penalty is constitutional, with exceptions in certain circumstances, such as imposition of the death penalty for nonhomicide crimes against individuals, *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008), for defendants who committed their crimes before the age of 18, *Roper v. Simmons*, 543 U.S. 551 (2005), or whose intellectual functioning is in a low range, *Atkins v. Virginia*, 536 U.S. 304 (2002). Accordingly, should I be confirmed as a district court judge, I would follow the law that the death penalty is not unconstitutional in all cases.

d. What factors do you believe would be relevant to the judge's analysis?

Response: The Supreme Court has looked at several factors in determining whether a sentence is unconstitutionally "cruel and unusual" under evolving standards of decency, including (1) "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practices at issue, *Roper v. Simmons*, 543 U.S. 551, 563 (2005); (2) "the standards elaborated by controlling precedents and by the Supreme Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning and purpose," *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008); and (3) the Supreme Court's exercise of its "own independent judgment whether the punishment in question violates the Constitution." *Roper, supra*, at 564. In the judicial exercise of independent judgment, the Supreme Court has considered such factors as whether the challenged sentencing practice serves legitimate penological goals, the proportionality of the sentence to the defendant's crime, and the offender's culpability and characteristics. *Roper, supra*, at 568. Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the Court of Appeals for the District of Columbia Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00537 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.483

8. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: Consideration of foreign law is not appropriate in interpreting the meaning of domestic law and the U.S. Constitution, unless such consideration is required by statute, the Constitution or controlling precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the District of Columbia Circuit.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Consideration of foreign law is not appropriate in interpreting the meaning of domestic law and the U.S. Constitution, unless such consideration is required by statute, the Constitution or controlling precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the District of Columbia Circuit.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: Should I be confirmed as a district court judge, I would not consider foreign law in interpreting the meaning of domestic law and the U.S. Constitution, unless such consideration is required by statute, the Constitution or controlling precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the District of Columbia Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00538 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.484

Responses of Kathleen M. O'Malley
Nominee to be U.S. Circuit Court Judge for the Federal Circuit
to the Written Questions of Senator Jeff Sessions

1. **In *U.S. v. Stern*, you departed downward and sentenced a defendant convicted of possessing 1,000 pages of child pornography on his computer to only 12 months and one day in prison. The Sentencing Guidelines recommend a range of imprisonment between 46 and 57 months. In your opinion you stated: "The individual who possesses child pornography, while demanding punishment, is considerably less culpable than a producer or distributor of the exploitative materials and is a marginal player in the overall child exploitation scheme."**

   a. **Your explanation for your downward departure cited the greater culpability of producers and distributors of child pornography.**

      i. **Do you acknowledge that separate statutes provide greater penalties, including mandatory minimum sentences, for those who produce and distribute child pornography?**

         Response: Yes.

      ii. **Do you acknowledge that the U.S. Sentencing Guidelines provide higher offense levels for individuals who produce and distribute child pornography?**

         Response: Not necessarily. Because of the manner in which sentencing enhancements are considered under U.S.S.G. §2G2.2(b), the Guidelines sometimes recommend a lower sentence for a given defendant who distributed child pornography than they recommend for a defendant who possesses, but does not distribute, child pornography.

      iii. **Based on the higher statutory and guideline sentences for those who produce and distribute child pornography, do you acknowledge that the greater culpability of these offenders is already built into our federal sentencing law even in the absence of downward departures?**

         Response: Not always, as explained in my answer to question 1(a)(ii).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00539 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.485

b. Do you believe the Sentencing Guidelines are too harsh on child sex crimes?

Response: No, generally. In particular, as I note in *Stern*, I have "consistently imposed harsh sentences upon defendants who possess child pornography" and I have rarely "disagreed with the Government's recommended sentences." *United States v. Stern*, 590 F. Supp. 2d 945, 947 (N.D. Ohio 2008). As noted in response to question 1(a)(ii), however, in light of how these particular guidelines operate, there are instances in which the guideline range for possession of child pornography can be higher than the recommended range for distribution or crossing state lines to engage in sexual intercourse with a minor.

i. If not, why did you cut the sentence so dramatically in this case?

Response: Given the sentencing factors that I was mandated to consider under 18 U.S.C. § 3553(a), *Stern* presented "an extraordinary and unique case." *Stern*, 590 F. Supp. 2d at 947. Many circumstances differentiated *Stern* from any other over which I have presided during my almost 16 years on the bench. These circumstances included, but were not limited to, the fact that: (1) the defendant began his crime by looking at pictures of other 14-year old girls when the defendant was himself 14; (2) expert testimony indicated that, at that young age, the defendant's adolescent brain was particularly susceptible to suggestion and addiction; (3) the Government did not suggest that Stern posed a risk of recidivism and expert testimony confirmed he did not; (4) the defendant sought therapy and counseling before any charges were brought; (5) the defendant completed college and began a productive career after, and in the face of the shame caused by, the charges; (6) the defendant's remorse was credible; (7) the images downloaded, while reprehensible, were less graphic or violent than those downloaded by other defendants I have sentenced; and (8) expert medical testimony indicated that a lengthy prison term for an offender who began viewing pornographic images at age 14 would interfere with, rather than enhance, rehabilitation.

ii. What factors did you consider when you decided to depart downward in this case?

Response: As required by law, I considered all factors outlined under 18 U.S.C. § 3553(a) and the advice provided by the Sentencing Guidelines. I outlined the factors I considered in my previous answer to question 1(b)(i). Notably, the Government did not appeal the sentence I imposed in *Stern*, which I believe indicates that my consideration of all relevant sentencing factors and exercise of my sentencing discretion were reasonable in the unique circumstances presented.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00540 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.486

c. You criticized the Sentencing Guidelines in your opinion stating:

"In short, the national sentencing landscape presents a picture of injustice. In the absence of coherent and defensible Guidelines, district courts are left without a meaningful baseline from which they can apply sentencing principles. The resulting vacuum has created a sentencing procedure that sometimes can appear to reflect the policy views of a given court rather than the application of a coherent set of principles to an individual situation. Individual criminal sentences are not the proper forum for an expansive dialogue about the principles of criminal justice. Such conversation, though vital, should not take place here – lives are altered each and every time a district court issues a sentence: this is not a theoretical exercise."

i. Why do you believe the Sentencing Guidelines do not provide a "meaningful baseline" and lack coherent and defensible guidelines?

Response: I do not. As to the Sentencing Guidelines generally, I believe they serve the important purpose of promoting uniformity in sentencing, are well and carefully conceived, and are deserving of great deference. The quotation listed here from *Stern* applied only to child pornography Sentencing Guidelines. As noted in *Stern*, I am troubled that the specific Guidelines at issue there have been adjusted repeatedly in a manner that is contrary to recommendations made by the United States Sentencing Commission, "do not reflect the kind of empirical data, national experience, and independent expertise that are characteristic of the Commission's institutional role," and, in certain, though not all cases, can suggest illogical results. *See Stern*, 590 F. Supp. 2d at 960 (citing *United States v. Ontiveros*, No. 07-CR-333, 2008 U.S. Dist. LEXIS 58774, *20 (E.D. Wis. July 24, 2008)).

ii. Do you think a judge should be able to impose whatever sentence he or she pleases based on each individual's circumstances?

Response: No.

iii. Do you believe empathy should play a role in sentencing?

Response: No. A court's sentencing determinations must be based upon the sentencing factors set forth in 18 U.S.C. § 3553(a), the advice provided by the Sentencing Guidelines, and a careful and reasonable exercise of the court's discretion in keeping with binding legal precedent.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00541 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.487

d. On May 21, 2010, the *New York Times* published an article discussing Brooklyn Judge Jack Weinstein's "crusade" to thwart federal child pornography laws. *See*, A.G. Sulzberger, *Defiant Judge Takes on Child Pornography Law*, N.Y. TIMES (May 21, 2010). Judge Weinstein defied congressionally set criminal penalties and decided cases based on his own policy preferences. I ask that you read the *New York Times* article on Judge Weinstein and answer the following questions:

i. Do you agree with Judge Weinstein that "those who view [child pornography] images, as opposed to producing or selling them, present [no] threat to children?" Why or why not?

Response: No. As I said in *Stern*:

> The Court finds that possession of child pornography is an exceedingly serious offense, among the most serious class of offenses that do not involve the direct use of violence or coercion on the part of the perpetrator. *See, e.g., United States v. Holtz*, 285 Fed. Appx. 548, 553 (10th Cir. 2008) ("Possession of child pornography is a serious matter. It's not just the possessing of it; it's what is done to innocent victims worldwide in order to allow adults to knowingly possess it."). . . .
>
> Laws criminalizing the possession of child pornography are in place to reduce the market for exploitation of the children that are severely victimized by this crime. . . . This crime shocks the conscience: "Children are exploited, molested, and raped for the prurient pleasure of [the defendant] and others who support suppliers of child pornography." *United States v. Goff*, 501 F.3d 250, 259 (3d Cir. 2007). The written word seems inadequate to describe the horrors of this crime.

Stern, 590 F. Supp. 2d at 951-52 (some citations omitted).

ii. Do you agree with Judge Weinstein that, through application of federal child pornography laws, "[w]e're destroying lives unnecessarily?" Why or why not?

Response: No. As I said in *Stern*, possession of child pornography must be punished with a term of imprisonment to discourage its creation and the exploitation of children.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00542 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.488

iii. **Do you agree with Judge Weinstein that "[a]t the most, [possessors of child pornography] should be receiving treatment and supervision?" Why or why not?**

Response: No.

iv. **Do you agree with Judge Weinstein that criminal defendants have "a constitutional right to have a jury know the punishment that would accompany a guilty verdict?" Why or why not?**

Response: No. Neither the Supreme Court nor the United States Court of Appeals for the Sixth Circuit has found such a right to exist.

2. **The Sixth Circuit criticized you in reversing your denial of qualified immunity to two police officers in *Chappel v. City of Cleveland*. The court stated that your analysis**

> **"represents exactly the sort of theoretical speculation that the courts are prohibited from engaging in...It represents the impermissible substitution of the district judge's own personal notions – about what might have been, could have been, or should have been – in a 'sanitized world of...imagination' quite unlike the dangerous and complex world where the detectives were required to make an instantaneous decision."**

a. **Do you accept the Sixth Circuit's criticism of your decision in this case?**

Response: I accept the Sixth Circuit's decision as binding precedent. I respectfully disagree, however, with their characterization of my opinion.

b. **Why did you believe it was proper to speculate about the facts in this case?**

Response: I do not believe that I engaged in speculation. The role of a district court on summary judgment is to construe the facts in the light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. This includes drawing all reasonable inferences in favor of the non-moving party. I believe I adhered to that obligation and avoided resolving factual questions which were in dispute.

c. **Why did you believe it was proper to question the two officers' actions after they were confronted by a criminal suspect who emerged in the dark from a closet holding a knife?**

Response: I did not question the officers' actions. That was not my role. I attempted to apply the law as it existed at the time to the facts presented. Ultimately, I concluded that there were material issues of fact regarding whether the officers' use of deadly force against a 15 year old boy who was hiding in his

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00543 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.489

bedroom closet and who was suspected of robbing a pizza delivery man was reasonable. As I said in *Chappell*:

> The Court does not, and would not presume to pass moral judgments upon McCloud, his family, or the Detectives. The very narrow question before the Court now is whether, on the record before it, there are genuine disputes of material fact that prevent judgment in the Detectives' favor on their claim of qualified immunity and require further inquiry before a jury. While the Court has found that certain legal and factual issues are not open to fair debate – such as whether McCloud was holding a knife when encountered – it also finds that there is genuine dispute over a host of other important facts. It is this reservoir of disputed facts which, at least under current, binding Sixth Circuit precedent, counsels against a judgment granting qualified immunity to the Detectives at this stage of the proceedings.

Chappell, 584 F. Supp. 2d at 1006.

d. In your personal opinion, when do you think a police officer should *not* be civilly liable for his or her actions while on duty?

Response: My personal opinion is not relevant. In this position and my former role as First Assistant to the Ohio Attorney General, I have worked closely with and formed close bonds with a variety of law enforcement officers. I have great respect for them and the difficult and dangerous jobs they do. Those agents and officers understand that, despite my relationship with and regard for them, my position requires a balancing of the facts of each individual case, and that there will be times when I am compelled to leave some decisions in the hands of the jury. The law dictates that these assessments be made on a case-by-case basis. In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court established the test for analyzing objective reasonableness. I described this test in *Chappell* before applying it to the facts presented there:

> Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.
>
> Application of this test "requires careful attention to the facts and circumstances of each particular case, including the [1] severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight."

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00544 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.490

Chappell, 584 F. Supp. 2d at 990 (citations and footnote omitted). Importantly, as I also noted in *Chappell*,

> [I]t is not for the Court to substitute its own notion of the "proper police procedure for the instantaneous decision of the officer at the scene." "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."

Id. (citations omitted).

3. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. **Do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

Response: I assume that President Obama concluded that I am qualified to serve as a Judge on the United States Court of Appeals for the Federal Circuit and to handle its unique jurisdiction and docket.

b. **During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

Response: Yes.

c. **What role do you believe that empathy should play in a judge's consideration of a case?**

Response: To the extent one defines empathy as the capacity to understand what others are experiencing and how they perceive the way they are treated, a judge can and should show empathy for all parties by engaging in careful and rigorous analysis of all arguments presented, explaining thoroughly the bases for all decisions, and being temperate in the language employed in those decisions and used in the courtroom. I do not believe, however, that empathy plays any role in the application of the law to the facts presented, and, accordingly, in the ultimate disposition of a case.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00545 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.491

d. Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: Not applicable.

ii. Please provide an example of a case in which you have considered your own subjective sense of empathy in determining what the law means.

Response: Not applicable.

iii. Please provide an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: In 2008, I considered a case in which a plaintiff contended that he had been terminated by his long-time employer in violation of the Americans with Disabilities Act and the Family and Medical Leave Act. The plaintiff had been an exemplary employee of the defendant for many years, but his performance declined as he succumbed to "the destructive power of alcoholism . . . ." *Seitz v. Lane Furniture Indus.*, Case No. 07cv171, 2008 U.S. Dist. LEXIS 79651, at *2 (N.D. Ohio Sept. 17, 2008). Ultimately, it was "clear that alcohol ruined [the Plaintiff's] career," and I empathized with what were clearly his "best efforts to overcome" his alcoholism. *Id.* at *2, *85. I concluded, however, that the "law [was] not designed to protect [the Plaintiff] from losing his job under the circumstances of th[at] case." *Id.* at 85. In my opinion, I "recognize[d] that this [was] a harsh result," for the Plaintiff, but concluded that the Defendant "had the right to keep its business running" and was under no legal obligation to "retain [the Plaintiff] if it decide[d] that his performance deficiencies [were] harming the company." *Id.* at 86.

e. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?

Response: Solely on the law and facts presented.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00546 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.492

4. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the particular decisions about which I was asked, reviewed the May 21, 2010 *New York Times* article which I was asked to read, and pulled from memory a number of cases I believed were responsive to question 3(d)(iii). I then drafted these responses. Thereafter, I had discussions with my law clerks and with individuals from the Department of Justice.

5. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00547 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.493

Responses of Robert Leon Wilkins
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **In 2004, prior to the Supreme Court's decisions in *Booker* and *Fanfan*, you co-authored an article in the *Atlanta Journal-Constitution* entitled "Fix Sentencing Guidelines." In that article, you urged Congress to "repeal the federal sentencing guidelines along with the mandatory minimum drug sentences," and allow the Sentencing Commission to draft new guidelines.**

   a. **Now that the guidelines are advisory instead of mandatory, do you still hold the same criticisms?**

      Response: No.

   b. **What level of deference will you show to the guidelines now that they are only advisory?**

      Response: In several cases, including *Nelson v. United States*, 129 S.Ct. 890 (2009) (per curiam), the Supreme Court has explained that "the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U. S. C. §3553(a), explaining any variance from the former with reference to the latter." I will follow that precedent.

   c. **Do you commit to follow the guidelines?**

      Response: I will follow the framework established by the Supreme Court, as described above.

   d. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

      Response: Yes.

2. **From 2001 to 2003, you served as counsel for a group of convicted sex offenders filing as plaintiffs in a class action suit challenging the District of Columbia Sex Offender Registration Act on constitutional and Privacy Act grounds. The plaintiffs received temporary, preliminary, and permanent injunctive relief in the district court. While the case was on appeal, the Supreme Court upheld sex offender registry statutes in Connecticut and Alaska. Based on those rulings, the U.S. Court of Appeals for the D.C. Circuit reversed the injunctions.**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00548 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.494

a. Do you believe the law should provide greater protection for perpetrators of sexual assault rather than their victims and the communities in which they live?

Response: No, I have never expressed or held such a belief.

b. Are you uncomfortable with the idea of a Megan's law?

Response: No.

c. Are you concerned that Megan's laws may violate the rights of convicted sex offenders?

Response: I am bound by and will follow the Supreme Court decisions and other precedent that have rejected constitutional challenges to Megan's laws. To the extent that there could be future litigation raising other challenges to Megan's laws in the future, it would be inappropriate for me to opine further.

d. Are you uncomfortable with the idea of requiring convicted sex offenders to register with the police or state administrative body?

Response: No.

3. According to your questionnaire, you are a member of the ACLU.

a. What is your level of involvement with that organization?

Response: I am currently a dues paying member. I have never held an official position in the organization. If confirmed, I intend to discontinue my membership.

b. Is it fair to say that you personally agree with the positions taken by the ACLU?

Response: I am not familiar with all of the positions taken by the ACLU; of those which I am aware, I have agreed with some and disagreed with others.

c. According to their website, the ACLU believes that the death penalty inherently violates the constitutional ban on cruel and unusual punishment and the guarantees of due process and equal protection.

i. Do you agree with the ACLU's position on the death penalty, as set forth on its website?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00549 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.495

Response: I am not familiar with this statement on the ACLU website. My understanding is that the ACLU often challenges alleged unfairness and arbitrariness in the application of the death penalty. Nonetheless, to the extent that the ACLU has articulated a position on the death penalty as characterized in the question above, I disagree.

ii. Do you have a personal objection to the death penalty?

Response: No.

d. If confirmed, how will your affiliation with the ACLU impact your judicial decision-making?

Response: If confirmed, my past affiliation with the ACLU will have no impact. I will be bound by and will follow the precedent of the United States Supreme Court and the Court of Appeals for the District of Columbia Circuit.

4. During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: When President Obama announced my nomination, he stated that I and the others nominated that day were "distinguished individuals [who] have demonstrated an unwavering commitment to justice throughout their careers," so I can only presume that those were the most important criteria to the President. I am an African American who was born to a teenage mother in modest financial circumstances, so one could say that I fit some of the criteria mentioned by President Obama in the quote mentioned above.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: I agree with Justice Sotomayor that judges apply the law to the facts, not feelings to facts.

c. What role do you believe empathy should play in a judge's consideration of a case?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00550 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.496

Response: To the extent that empathy is defined as the ability to recognize the position and circumstances of others, that quality could enhance a judge's ability to listen to the parties, but it should not play a role in applying the law to the facts.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: Not applicable.

e. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?

Response: I believe that a judge should not base his or her decisions on a desired outcome, but rather on the law and the facts.

5. Please describe with particularity the process by which these questions were answered.

Response: I received the questions, via the Department of Justice, on August 4, 2010. I then reviewed the questions and drafted responses. I later had discussions with the Department of Justice, and subsequently I asked the Department of Justice to submit these responses to the Judiciary Committee on my behalf.

6. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00551 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.497

Responses of Robert L. Wilkins
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: If the "living document" perspective means that the Constitution should not be interpreted first and foremost in accordance with its text, then I disagree.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: I am not familiar with this statement by Justice Brennan or the context in which it was made. If confirmed as a District Court judge, I would consider the text of the Constitution, the intent of the framers, and Supreme Court precedent to resolve constitutional questions.

3. **Do you believe judicial doctrine rightly incorporates the "evolving understandings of the Constitution forged through social movements, legislation, and historical practice"?**

   Response: I am not familiar with this statement or the context in which it was made. The Supreme Court has held that the plain language of the text of the Constitution, as well as the original intent of the framers, is the starting point for constitutional interpretation. At the same time, the Court has at times recognized that the Constitution can protect rights in a context not explicitly envisioned by the framers, such as by holding that the 14th Amendment prohibits gender discrimination and racial segregation, even though both of those practices were embraced by the framers of that amendment. If confirmed as a District Court judge, I would be bound by those precedents.

4. **Do you believe empathy is "an essential ingredient for arriving at just decisions and outcomes" and should play a role in a judge's consideration of a case?**

   Response: To the extent that empathy is defined as the ability to recognize the position and circumstances of others, that quality could enhance a judge's ability to listen to the parties, but it should not play a role in applying the law to the facts.

5. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

66720.498

a. Do you believe *Lopez* and *Morrison* are consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: Yes.

b. Why or why not?

Response: In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court explained that *Lopez* and *Morrison* were consistent with the Court's earlier Commerce Clause decisions because the statutes struck down in those two cases did not actually regulate economic activity, in contrast to the statutes which had been upheld in earlier Commerce Clause decisions.

6. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: If confirmed as a District Court judge, I would be bound by the holding and analysis of the majority opinion in *Roper*.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: I am not familiar with this statement. In *Roper*, the Supreme Court stated that "we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." 543 U.S. at 560-61 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958) (plurality opinion)). If confirmed as a District Court judge, I would be bound by that and other relevant precedent of the Supreme Court and the Court of Appeals for the District of Columbia Circuit.

b. How would you determine what the evolving standards of decency are?

Response: If confirmed as a District Court judge, I would follow Supreme Court precedent to perform this analysis.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court has rejected constitutional challenges to the death penalty in a variety of circumstances. Judges are bound by those precedents.

d. What factors do you believe would be relevant to the judge's analysis?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00553 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.499

Response: As a District Court judge, I would follow Supreme Court precedent to ascertain the relevant factors.

7. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: If confirmed as a District Court judge, it would be proper to rely upon foreign law only in those circumstances where precedent of the Supreme Court or the Court of Appeals for the District of Columbia Circuit so requires.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: If confirmed as a District Court judge, it would be appropriate to look to foreign law only in those circumstances where Supreme Court precedent or domestic law so requires.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed as a District Court judge, I would consider foreign law only in those circumstances where Supreme Court precedent so requires.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I am not aware of any such circumstances.

d. Would you consider foreign law when interpreting the Eighth Amendment?

Response: If confirmed as a District Court judge, I would follow Supreme Court precedent to ascertain whether foreign law was relevant to an Eighth Amendment challenge.

e. Other amendments?

Response: If confirmed as a District Court judge, I would follow Supreme Court precedent to ascertain whether foreign law was relevant to a constitutional issue.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00554 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.500

SUBMISSIONS FOR THE RECORD

AIPLA
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

MAY 28 '10 AM 10:32

May 19, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of the Honorable Kathleen M. O'Malley to the U.S. Court of Appeals for the Federal Circuit

Dear Chairman Leahy and Ranking Member Sessions:

The American Intellectual Property Law Association ("AIPLA") is pleased to submit this letter in response to President Obama's nomination of the Honorable Kathleen M. O'Malley, United States District Court Judge for the Northern District of Ohio, to be a judge on the United States Court of Appeals the Federal Circuit. AIPLA believes that Judge O'Malley, having demonstrated dedication, diligence, and respect for the law, is well qualified to serve on the Federal Circuit and that her knowledge and experience enable her to serve ably and well.

AIPLA is a national bar association of over 16,000 members who are primarily lawyers in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

AIPLA notes that Judge O'Malley has presided over more than 100 patent and trademark cases in the fifteen years that she served on the District Court for the Northern District of Ohio, and that she has sat by designation on several Federal Circuit panels hearing appeals in patent cases. Judge O'Malley has also served as a visiting professor at Case Western Reserve University School of Law and has lectured extensively on patent law and litigation. In her eight years of legal practice prior to her appointment to the bench, Judge O'Malley focused on complex litigation, including patent, trademark, antitrust and trade secret litigation. Judge O'Malley earned her Bachelor's Degree from Kenyon College, where she graduated magna cum laude and Phi Beta Kappa, and received her Juris Doctorate (and Order of the Coif) from Case Western Reserve University School of Law.

241 18th Street, South · Suite 700 · Arlington, VA 22202
Phone: 703.415.0780 · Fax: 703.415.0786 · www.aipla.org · aipla@aipla.org

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00555 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.501

AIPLA finds Judge O'Malley to have the "intellect, legal skills, professional and personal integrity, sound judgment, and extensive experience in relevant fields of law" necessary for service on the Federal Circuit. These are qualifications which the Association has identified in its recent "White Paper" on judicial nominations to the Federal Circuit ("AIPLA Recommendations Regarding Nomination of Judges to the United States Court of Appeals for the Federal Circuit"). Judge O'Malley's credentials also satisfy the White Paper's recommendation that, at this point in time, a preference should be given to federal district court judges having substantial experience in trying patent cases and a demonstrated ability to effectively manage those cases.

For the reasons noted, we believe Judge O'Malley will be an excellent addition to the U.S. Court of Appeals for the Federal Circuit. In our view, her service as a district judge and other activities have demonstrated an interest in and understanding of patent law, as well as an objective appreciation of the U.S. intellectual property system as a whole.

Respectfully submitted,

Alan J. Kasper
President

INTELLECTUAL PROPERTY LAW ASSOCIATION OF CHICAGO

P.O. Box 472 • Chicago, Illinois 60690-0472
312-987-1416

July 27, 2010

2010-2011 Officers
Edward D. Manzo
(President)
Janet M. Garetto
(President-Elect)
Janet A. Pioli
(Vice President)
Garret A. Leach
(Secretary)
Nina H. Borders
(Treasurer)
2010-2011 Board of Managers
Mary Jo Boldingh
David S. Fleming
H. Michael Hartmann
Frank J. Kozak
Dean A. Musco
Bradford R. L. Price
Alisa Simmons
Monica L. Thompson
Patrick G. Burns
(Immediate Past President)

Senator Patrick D. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Honorable Kathleen M. O'Malley
to the U.S. Court of Appeals for the Federal Circuit

Dear Senator Leahy:

The Intellectual Property Law Association of Chicago (IPLAC) Judicial Appointments Committee submits this letter in formal support of the Honorable Kathleen M. O'Malley, presently a judge in the Northern District of Ohio, for confirmation to the United States Court of Appeals for the Federal Circuit.

IPLAC is one of the largest intellectual property law associations in the United States, with approximately 1000 members. Established in 1884, IPLAC is the nation's oldest bar association focused on patent law. The Association's founding members declared their original purpose to include "aiding reforms in the administration of the Patent Office," and "discussing such other matters hereafter to arise as may be of common interest . . ." Today, one such common interest is the Federal Circuit judiciary.

Since 1982, when the Judicial Code was amended to create the U.S. Court of Appeals for the Federal Circuit, that court has had *exclusive* appellate jurisdiction over appeals of patent cases from all federal district courts across the United States and its territories. Of course it also has jurisdiction over appeals from the United States Patent and Trademark Office ("USPTO") (along with other appellate jurisdiction). During the past 28 years, the number patents issued by the USPTO has risen dramatically. Likewise, the number of patent infringement lawsuits filed in federal courts, and appeals of those cases to the Federal Circuit, have increased significantly. Even during the recent economic downturn, filings of patent infringement appeals to the Federal Circuit stayed strong—392 cases were filed in 2008 and 398 in 2009.

This remarkable increase in patents and patent litigation reflects the importance that industry, universities, federal agencies, and individual inventors place on patents. This activity is fueled by large investments in research and development that generate new inventions to patent, as well as the need to obtain strong intellectual property rights to protect those investments. Intellectual property rights represented by patents are a crucial and growing component of our knowledge-based economy.

Congress has become increasingly aware of the significance of patents, and the need to maintain their vitality. Since 1982, Congress has passed legislation on over 25 different occasions to reform and improve Title 35, the patent statute. For the past several years, Congress has been considering further patent reform legislation that addresses significant, and sometimes controversial, issues of great public interest.

The Supreme Court of the United States also has taken a strong interest in patent cases in recent years. *See, e.g., Bilski v. Kappos*, No. 08-964 (U.S. June 28, 2010); *Quanta Computer Inc. v. LG Elecs. Inc.*, 128 S. Ct. 2109 (2008); *Microsoft Corp. v. AT&T Corp.*, 127 S. Ct. 1746 (2007); *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007); *MedImmune Inc. v. Genentech, Inc.*, 549 U.S. 118 (1007); *eBay Inc. v. MercExchange LLC*, 547 U.S. 388 (2006); *Merck KGaA v. Integra Lifesciences I Ltd.*, 545 U.S. 193 (2005); *Holmes Group Inc. v. Vornado Air Circulation Sys. Inc.*, 535 U.S. 826 (2002); and *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002). The Supreme Court's opinions in patent cases boost public scrutiny of how patent appeals are considered and handled at the Federal Circuit, thereby increasing the importance of patent law experience among the judges.

This year, the Federal Circuit faces three vacancies with Chief Judge Paul R. Michel's retirement at the end of May 2010, and Judges Alvin A. Schall and Haldane R. Mayer taking senior status. Due to these vacancies and the important role of the Federal Circuit in our patent system, IPLAC is committed to assist the Senate in its evaluation and confirmation of appointments of nominees to the Federal Circuit. IPLAC shares and supports the Senate's interest in filling these vacancies with highly qualified candidates who will further and improve the important work of the Federal Circuit.

While the Federal Circuit has been comprised of many talented judges with diverse backgrounds (including former administrative judges, in-house corporate counsel, outside private counsel and law professors), no Article III district court judge has ever been appointed to the Federal Circuit. This is in stark contrast to every other Circuit Court of Appeals. IPLAC strongly believes the Federal Circuit will benefit greatly from the appointment of an Article III district court judge, particularly one with experience

66720.504

adjudicating patent cases. Many of the appeals to the Federal Circuit come from the district courts. While the Federal Circuit occasionally has had district court judges sit by designation, there is no substitute for a full-time Federal Circuit judge who has years of first-hand experience as a district court judge deciding all of the multifaceted issues that are reviewed by a Circuit Court of Appeals.

The Honorable Kathleen M. O'Malley is well qualified to be the first district court judge appointed to the Federal Circuit. She was nominated for the Federal Circuit by President Barack Obama on March 10, 2010. Prior to that date, Judge O'Malley spent sixteen years in the Sixth Circuit as a district court judge, six years in private practice, and three years in the Office of the Attorney General. Considering this experience, as well as Judge O'Malley's substantial patent experience, IPLAC fully supports the President's nomination of Judge O'Malley.

Judge O'Malley's significant experience with patent cases as a district court judge merits elaboration. She has adjudicated a wide range of issues that are significant to the outcome of a patent case, including claim construction, infringement, invalidity, inequitable conduct defense, preliminary injunction, and concurrent USPTO proceedings. Her cases have encompassed a broad and varying assortment of technologies.

She has held numerous *Markman* hearings on claim construction, which is a threshold issue in most patent cases. For example, in *Oatey Co. v. Ips Corp.*, she construed claims involving a washing machine drain outlet box. No. 1:03 CV 1231, 2006 WL 581240 (N.D. Ohio 2006). In *SKW Americas v. Euclid Chem. Co.*, she construed claims involving a liquid admixture for hydraulic cement. 231 F. Supp. 2d 626 (N.D. Ohio 2002).

In *Baran v. Medial Device Tech.*, Judge O'Malley granted summary judgment of non-infringement after holding a Markman hearing for claim construction of claims covering an automated biopsy instrument. One of the claims included a means-plus-function limitation, which requires special consideration under 35 U.S.C. § 112(6). 666 F. Supp. 2d 776 (N.D. Ohio 2009). Judge O'Malley granted summary judgment of non-infringement of a screw driver garage door opener patent after concluding prosecution history estoppel barred application of the doctrine of equivalents. *GMI Holdings, Inc. v. Stanley Door Sys.*, 943 F. Supp. 1420 (N.D. Ohio 1996). After considering infringement issues on a patent for construction shears, Judge O'Malley denied a motion to dismiss and a motion for summary judgment in *Allied Gator, Inc. v. NPK Constr. Equip.*, Inc., 937 F. Supp. 694 (N.D. Ohio 1996).

Judge O'Malley has considerable experience in deciding the validity of patent claims. In *Oatey Co. v. Ips Corp.*, she held a patent on improvements to washing machine outlet boxes invalid based on obviousness and granted summary judgment. 665 F. Supp. 2d 830 (N.D. Ohio 2009). Additionally, in *Weatherchem Corp. v. J.L. Clark, Inc.*, she found a patent for caps to seal cylindrical spice containers invalid under 35 U.S.C. § 103 for being obvious and unpatentable under 35 U.S.C. § 102(b) for on-sale bar. She also found there was no infringement. 937 F. Supp. 1262 (N.D. Ohio 1996).

Judge O'Malley also has experience with the affirmative defense of inequitable conduct. In a case involving PrintNet software, she found the allegations of inequitable conduct were sufficient to survive a motion to dismiss. *Tesseron, Ltd. v. GMC Software*, No. 1:04CV2182, 2006 WL 840365 (N.D. Ohio 2006). This case was decided pre-*Exergen*, in which the Federal Circuit held there is a heightened level of scrutiny in pleading inequitable conduct as an affirmative defense.

Patent cases often raise a variety of other issues, and Judge O'Malley has first-hand experience with many of them. In a case involving processes for making radio frequency identification devices, she granted a motion to stay pending reexamination of the patent at issue by the USPTO. She also denied a motion to dismiss/transfer venue and considered the four factors for preliminary injunction in that case. *Avery Dennison Corp. v. Alien Tech. Corp.*, No. 08 CV 795, 2009 WL 2169211 (N.D. Ohio Jul. 20, 2009). Judge O'Malley entered a preliminary injunction in a case involving a method for using a J-Hook to support low voltage communication cables. She also made determinations of claim construction and invalidity in that case. *Erico Int'l Corp. v. Doc's Marketing, Inc.*, No. 1:05-CV-2924, 2006 WL 1174259 (N.D. Ohio 2006).

In conclusion, after review of Judge O'Malley's experience as an Article III district court judge with many patent cases, IPLAC submits this letter in support of Judge O'Malley's nomination to the Federal Circuit and encourages the Senate to ratify her nomination.

Respectfully,

James R. Sobieraj	Olivia T. Luk	Edward D. Manzo
IPLAC Judicial Appointments Committee	IPLAC Judicial Appointments Committee	IPLAC President

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 28, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Nomination Of Beryl Howell To Be A
United States District Court Judge For The District Of Columbia
July 28, 2010

I am delighted to introduce Beryl Howell to the Committee, now as a nominee. Those of you who have served with me here from 1993 through 2003 will remember her as my General Counsel and one of the most effective members of our Judiciary Committee staff. With her background as a highly-decorated Federal prosecutor, Senator Sessions will remember her work on many criminal justice and national security issues. Senator Hatch will no doubt remember her work on our Digital Millennium Copyright Act, our Anti-Cybersquatting Consumer Protection Act and our No Electronic Theft Act. Senator Kyl and Senator Grassley will recall her work on our National Information Infrastructure Protection Act and our Computer Fraud and Abuse statute, and on important oversight matters including our bipartisan hearings on Ruby Ridge that led to improvements at the FBI. Senator Cornyn will be interested in her work on Electronic Freedom of Information initiatives and her induction into the Freedom of Information Act Hall of Fame.

What some of you may not know is her background before she joined the Senate staff, and her work since. She grew up in a proud military family. She was awarded her undergraduate degree with honors in Philosophy from Bryn Mawr College in Pennsylvania, and earned her law degree at Columbia University School of Law, where she was a Harlan Fiske Stone Scholar. She clerked for Judge Dickinson Debevoise on the United States District Court for the District of New Jersey.

Having worked as a student assistant in a U.S. Attorney's office, she joined the U.S. Attorney's Office for the Eastern District of New York in 1987. As an Assistant U.S. Attorney, she worked there almost six years and rose to be the Deputy Chief of the Narcotics Section. Her grand jury investigations and prosecutions included

complex public corruption, narcotics and money laundering cases involving the leadership of the Chinatown Flying Dragons gang, the Cali drug cartel and others.

Descriptions of her cases read like crime novels. She successfully prosecuted the leadership of a Chinatown gang, called the Flying Dragons, for heroin trafficking, and extradited the head of the gang after he fled to Hong Kong. She successfully prosecuted a group of Colombian drug dealers and arrested the gang members just as they were packing almost $20 million in cash from narcotics proceeds into a hidden compartment of a truck to smuggle it out of the country. Then, some of these defendants attempted a prison escape by bribing officials, and she successfully prosecuted the perpetrators of the escape plan. She also handled the successful investigation and prosecution of over 20 corrupt New York City building inspectors engaged in extortion.

Her work was recognized by her twice being awarded the U.S. Attorney Special Achievement Award for Sustained Superior Performance, by commendations from the FBI, DEA and the New York City Department of Investigation, and ultimately by the prestigious Attorney General's Director's Award for Superior Performance. I always felt lucky to have hired her.

She left us in 2003 to help establish the Washington, D.C., office of a consulting and technical services firm specializing in digital forensics, computer fraud and abuse investigations as the Executive Managing Director and General Counsel of Stroz Friedberg. While in the private sector, she received the FBI Director's Award for her work assisting in a Government cyber-extortion investigation.

She was a member of the Commission on Cyber Security of the Center for Strategic and International Studies, has taught legal ethics as an adjunct professor at the American University Washington College of Law and has twice been confirmed by the Senate to serve as a member of the bipartisan U.S. Sentencing Commission, to which she was appointed by President Bush. She contributed to the Sentencing Commission report that led to our breakthrough this year with Senate passage of historic legislation that Senator Durbin, Senator Sessions and Senator Coburn crafted to end sentencing disparities, the Fair Sentencing Act.

We rarely have before us nominees to the bench with the breadth of experience that she brings. She has spent more than 23 years in public service. In addition to her experiences in the Legislative, Executive, and Judicial branches of the Federal Government, she has also been a law professor, a lawyer in private practice; and a principal and in-house general counsel at a business that she helped to grow from one office to 11 offices around the world.

She and her husband have raised their three children in the District and are long-

time citizens here. That involvement, her public service background and her steadfast commitment to justice make her an ideal nominee. I commend President Obama for choosing to nominate her. I urge this Committee to approve her nomination and the Senate to grant its consent so that she may be appointed and serve all the people of the District of Columbia fairly and impartially as a United States District Court Judge.

# # # # #

Prepared Statement of Paul Strauss

United States Senator

for the District of Columbia

before the

Committee on The Judiciary

United States Senate

on the Nominations of

Robert Leon Wilkins, and Beryl Alaine Howell

to be United States District Judges for the District of Columbia,

Wednesday, July 28, 2010

Dirksen Senate Office Building

Room 226

Chairman Whitehouse, and Members of the Senate Committee on the Judiciary, I am Paul Strauss, the United States Senator elected by voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I appreciate the opportunity to provide this statement for the record on behalf of my constituents. I wish to express my full support of President Barack Obama's nominations of Ms. Beryl Alaine Howell and Mr. Robert Leon Wilkins to be United States District Court Judges for the District of Columbia. I have taken considerable time to familiarize myself with the outstanding records of these individuals, and have met with Ms. Howell personally. I have also spoken with Mr. Wilkins briefly as well as substantially reviewing both of their professional and scholarly work. As an elected official and practicing attorney, it is my opinion that these candidates would be exceptional United States District Court Judges.

Ms. Beryl Alaine Howell

Ms. Howell received her Juris Doctor degree from Columbia University School of Law in 1983, after attending Bryn Mawr College for her Bachelor of Arts. After law school she began an impressive and multi-faceted career in the legal world, in both the public and private sectors. Ms. Howell clerked for the Honorable Judge Dickinson Richards of the District of New Jersey for two years, followed by another two years of private practice in New York. From 1987 to 1993, Ms. Howell served as an Assistant United States Attorney for the United States District Court for the Eastern District of New York. After working for the Judiciary Committee, on November 21, 2004 Ms. Howell was confirmed as a member of the United States Sentencing Commission. She also was the executive managing director and general counsel of Stroz Friedberg LLC from 2003 to 2009.

66720.511

Ms. Howell's vast experience and understanding of the law, along with her specialization in first amendment protection and public corruption make her a very strong candidate to be seated as a United States District Court Judge for the District of Columbia. Furthermore, I believe that Ms. Howell's most notable contribution to the Federal Courts will be drawn from her extensive knowledge and expertise concerning cyber crime, a topic about which she has written a myriad of scholarly articles as well as receiving significant national recognition. As our world becomes increasingly technologically advanced, Ms. Howell's leadership on electronic crime will help to keep the District of Columbia on the cutting edge. Her exposure and expertise in both the public and private sectors of the law make Ms. Howell a veteran of the judiciary process. I am fully confident that she will excel at the position of United States District Judge for the District of Columbia.

Mr. Robert Leon Wilkins

Mr. Wilkins earned his degree in Chemical Engineering at The Hulman Institute of Technology in 1986, graduating cum laude. He then went on to attend Harvard Law School in 1989 earning a J.D. Beginning as a litigator, Mr. Wilkins immediately showed a strong work ethic and knowledge of the law and in 1996 he was made Chief of the Public Defender Service's special litigation section. In this role he not only tried over 30 cases but also dealt with appeals and judicial investigations, along with coordinating impact litigation and government relations. His work in this role led him to be named the office's "premier advocate for defendants' rights," by the *Legal Times*.

On May of 2002 Mr. Wilkins joined Venable LLP's corporate defense, white collar, technology, and commercial litigation practice groups and immediately excelled in this position. He represented a wide variety of clients in a multitude of cases from bribery and patent infringement cases to Grand Jury subpoena investigations. Based on his accomplishments and proficiency in complex litigations Mr. Wilkins was also honored as one of the city's top criminal defense lawyers by the *Washingtonian* magazine.

Mr. Wilkins' vast experience in complex litigations and his extensive understanding of the judiciary process make him a premier candidate for the position of U.S. District Judge. Mr. Wilkins' accomplishments have not gone unnoticed; he has been nominated and received multiple honors and awards, one of which being an award from the National Law Journal designating him one of "40 under 40 most successful young litigators in America". I am fully confident that Mr. Wilkins will be an outstanding U.S. District Court Judge and I look forward to his prompt conformation.

Were I seated with the full rights and privileges of a voting United States Senator, I would vote to confirm both these nominations without hesitation. However, since I am unable to do so, I ask that you extend to me a degree of Senatorial courtesy and cast your vote in support of my constituents, Robert Leon Wilkins and Beryl Alaine Howell, both residents of the District of Columbia. I look forward to following their successes as they serve our nation as outstanding members of our Federal Judiciary.

Finally, in closing, I would like to thank Mr. John Mickley of my legislative staff for his help in facilitating meetings with the nominees, researching their backgrounds, and preparing this statement.

66720.513

GEORGE V. VOINOVICH
OHIO

524 HART SENATE OFFICE BUILDING
(202) 224-3353
TDD: (202) 224-6997
http://voinovich.senate.gov

United States Senate
WASHINGTON, DC 20510-3504

APPROPRIATIONS
RANKING MEMBER, SUBCOMMITTEE ON HOMELAND SECURITY
ENVIRONMENT AND PUBLIC WORKS
RANKING MEMBER, SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

July 27, 2010

Chairman Patrick Leahy
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Jeff Sessions
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Chairman Leahy and Ranking Member Sessions:

I write to urge an expeditious confirmation process for Judge Kathleen O'Malley who is nominated to the United States Court of Appeals for the Federal Circuit.

Judge O'Malley was appointed to the U.S. District Court for the Northern District of Ohio by President Clinton on October 12, 1994. Prior to this, and while I was Governor, Judge O'Malley served Ohio as First Assistant Attorney General and Chief of Staff for the Ohio Attorney General from 1992-1994 and as Chief Counsel to the Attorney General from 1991-1992. Judge O'Malley also worked in private practice for Porter, Wright, Morris & Arthur, from 1985-1991 where she was partner. Judge O'Malley graduated *magna cum laude* and Phi Beta Kappa from Kenyon College in 1979 and received her J.D. degree from Case Western Reserve University School of Law, Order of the Coif, in 1982, where she served on Law Review and was a member of the National Mock Trial Team.

During her time with the Ohio Attorney General, Judge O'Malley showed herself to be a lawyer's lawyer. I believe that her judicial career also reflects her commitment to a life in the law. I trust that her intellect that can be seen in her judicial work and her work ethic that I saw firsthand at the Attorney General's office will be well appreciated at the Federal Circuit. Since I arrived in the Senate, I have had a particularly keen interest in intellectual property issues. Consequently, I am pleased that the court charged with review of many such issues will receive the benefits of an experienced jurist like Judge O'Malley.

If you have any questions or concerns, please contact me.

Sincerely,

George V. Voinovich
United States Senator

STATE OFFICES:
36 EAST SEVENTH STREET
ROOM 2615
CINCINNATI, OHIO 45202
(513) 684-3265

1240 EAST NINTH STREET
ROOM 3061
CLEVELAND, OHIO 44199
(216) 522-7095

37 WEST BROAD STREET
ROOM 300
COLUMBUS, OHIO 43215
(614) 469-6697
(614) 469-6774 (CASEWORK)
(800) 205-6446 (CASEWORK)

78 WEST WASHINGTON STREET
P.O. BOX 57
NELSONVILLE, OHIO 45764
(740) 441-6410

420 MADISON AVENUE
ROOM 1210
TOLEDO, OHIO 43604
(419) 259-3895

PRINTED ON RECYCLED PAPER

NOMINATIONS OF SUSAN L. CARNEY, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT; AMY TOTENBERG, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; JAMES E. BOASBERG, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; AMY B. JACKSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; JAMES E. SHADID, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS; AND, SUE E. MYERSCOUGH, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

WEDNESDAY, SEPTEMBER 15, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., Room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin presiding.

Present: Senators Franken and Sessions.

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

Senator DURBIN. If I could ask everyone to please be seated. Good afternoon. This hearing of the Judiciary Committee will come to order.

Today, we have before us six outstanding judicial nominees to the Federal bench, and I commend President Obama for sending their names to the Senate. I would like to welcome each of our nominees, as well as their family members and friends who are in attendance.

Our first nominee panel today—excuse me just a second.

Thank you. I am just getting my signals straight here.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00569 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

First, we are going to welcome members of the House and Senate who are here to introduce those nominees who will be before the Judiciary Committee today. I see Senator Chris Dodd is in attendance. Senator Chambliss we hope will arrive very shortly. Senator Isakson from Georgia, also, welcome. Representative Eleanor Holmes Norton from the District of Columbia, fresh from her victory yesterday, welcome back. And Congressman Aaron Schock.

So at this point, because of their own schedules, I am going to allow my colleagues to speak. I will tell those in attendance that on the first nominee panel today, we will have Susan Carney, nominated to serve on the U.S. Court of Appeals for the Second Circuit.

On the second panel, we will hear from five district court nominees. Amy Totenberg, who has been nominated to serve in the Northern District of Georgia; James Boasberg and Amy Jackson, nominated to serve on the U.S. District Court for the District of Columbia; and, James Shadid and Susan Myerscough, who have been nominated to serve in the Central District of Illinois.

Each of the nominees has the support of their home state Senators and in the case of the two District of Columbia nominees, they have the support of D.C. Delegate Eleanor Holmes Norton.

At these nominations hearings, it is traditional for nominees to be introduced to the Committee by members from their home states. The Ranking Member is on his way and will be here shortly, and he has given me permission to go forward with the hearing.

I would note that at 3 p.m., we have a ceremony on the steps of the Capitol in remembrance of the victims of September 11. We may be able to conclude this entire hearing by then; but if not, it is likely that we will take a short recess so that all members will have a chance to participate in that important hearing.

So before I introduce my nominees, I am going to defer to my colleagues who are here. And I believe the most senior in attendance would be the Senator from Connecticut, Senator Chris Dodd.

PRESENTATION OF SUSAN L. CARNEY, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT BY HON. CHRISTOPHER DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. Thank you, Mr. Chairman. That was not always the case, I want you to know, I was senior. But I thank you, Mr. Chairman, very much. And I know the Ranking Member will be along soon, as well.

So I thank you for providing me this opportunity this afternoon to present to you and to the members of the Committee for your consideration the pending judicial nomination for the second circuit. And as you mentioned already, I have the honor of introducing you to Susan Carney, an extremely well respected member of Connecticut's legal community, nominated by the President in May to serve on the court of appeals for the second circuit.

I would also like to take this opportunity to introduce some of her family. I am hesitant, because it is a—I do not know if the whole crowd made it or not, but I went down the potential list and it could fill this room, I think, potentially. But her husband, who is here, Lincoln Caplan; her daughter, Molly, who I met a moment ago, a student at Columbia University.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00570 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Her mother, Mrs. Carney, who is a veteran of the United States Navy, and delighted that she made the trip to be with us. Mrs. Carney, thank you and thank you for your service to our country, as well, too, and glad to have you with us today.

Birch Bayh is here, former colleague, member of this Committee, and a great friend of the Carney family, the nominee's family, and was willing to come along and be here with us today, as well. Birch, it is great to see you as part of this confirmation process.

The Senate's constitutionally mandated duty to provide advice and consent on nominees to the Federal bench is, in my view, one of the body's most important functions. It is our obligation, as members of the U.S. Senate, to carefully examine judicial nominees and determine for ourselves whether they are qualified for the positions that they have been nominated for.

While I realize that my colleagues approach this process with different criteria, I firmly believe that Susan Carney is, by any measure and any criteria, imminently qualified to serve on this most important circuit court.

Since her graduation from Harvard Law School in 1977, Susan has enjoyed a diverse and illustrious legal career that has taken her from government service to private practice to the halls of some of the most prestigious education and research institutions in the world.

Having graduated magna cum laude, Susan clerked for Judge Levin Campbell on the first circuit court of appeals, following a distinguished career in the private sector, where she represented large nonprofit organizations on behalf of a variety of firms in Washington, DC, Los Angeles and Boston.

Susan Carney was hired as the associate general counsel for the Peace Corps in 1996 and after 2 years of performing important legal work for that agency, Susan joined the office of general counsel at Yale University in New Haven, Connecticut.

Since 2001, Susan has served as Yale's deputy general counsel and done so with great distinction, I might add, Mr. Chairman. It is the second highest ranking legal position at the university. In her capacity, Susan has worked on a broad array of legal matters that come before the university, from international affiliations and transactions to research, intellectual property, technology transfer, and compliance issues.

Throughout her career, Susan Carney has developed a professional versatility and breadth of legal knowledge well suited to serve on the second circuit court of appeals. And perhaps even more important, I believe she has exhibited the kind of temperament and unflinching respect for the rule of law that are absolutely critical components, in my view, of serving on the Federal courts.

Last fall, before she was nominated by President Obama, I had the wonderful opportunity to spend time with Susan in my office in Hartford, Connecticut. Among the many topics, including, obviously, the Peace Corps—I served as a volunteer and she served as legal counsel—it came up during that conversation.

We talked about my father's service at the Nuremberg trials in 1945 and 1946 and how the Nuremberg trials are a powerful example of our Nation's commitment to the rule of law. And during that meeting, Susan reiterated her commitment to that ideal. I have no

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00571 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

doubt whatsoever that, if confirmed, that commitment to the rule of law will define her service as a Federal judge on the second circuit court of appeals.

So, Chairman Durbin and Senator Sessions, Senator Franken, as well, has joined you on the Committee here, I am certain that during the course of this afternoon's hearing, Susan's excellent qualifications will be closely and fairly scrutinized. It is my hope and confidence that following the Committee's consideration, the full Senate will be able to move forward expeditiously in confirming this superb nominee to serve on this most important circuit court.

I thank the Committee.

Senator DURBIN. Thank you, Senator Dodd.

I received a note here, and I would ask the indulgence of the other members. Congressman Schock, I believe, has a roll call vote that ends very shortly and I would like to give him an opportunity to say a few words before he has to depart.

PRESENTATION OF JAMES E. SHADID, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS BY HON. AARON SCHOCK, A U.S. REPRESENTATIVE FROM THE STATE OF ILLINOIS

Representative SCHOCK. Thank you very much, Senator Durbin. I appreciate that. And to my fellow panelists, I appreciate you indulging me.

Once again, thank you, Senator Durbin and members of the Committee, for allowing me to share with you my reasons for enthusiastically supporting President Obama's nomination of State Circuit Court Judge James Shadid as a Federal district court judge.

Jim Shadid is from my hometown of Peoria, Illinois. But that is not why I am here to support his nomination. I want to make clear that my support is not perfunctory support for someone who is simply from my district. I am here because State Circuit Court Judge James Shadid has been an outstanding circuit court judge, by every measure.

In fact, I believe he is a role model for what it takes to clear backlogged cases and efficiently running the courts; and, more importantly, he is also a role model for fairness, justice, and protecting the public.

James Shadid has the perfect temperament to serve the public as a judge. He comes to trials with no preconceived notions and is abundantly fair, has deep insights into the law, and has always ensured criminal defendants a fair trial. If and when those defendants have been found guilty, Judge Shadid's sentencing for violent criminals has been consistent. He is a tough, no nonsense, clearheaded judge, who has handed down thoughtful, but tough sentences.

In a well known case in my hometown of Peoria, a defendant was on trial for shooting a gun into a crowd at one of Peoria's high schools. The defendant was found guilty. Judge Shadid sentenced him to 24 years in prison.

The sentence was appealed and the appellate court found that Judge Shadid placed an undue emphasis on the fact that the shoot-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00572 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

ing took place in a school, reversed the sentence, and remanded the case back to Judge Shadid for re-sentencing.

The appearance of the appellate court pressing Judge Shadid to go easier on the defendant's sentence was plain for all to see in our community. Yet, Judge Shadid carefully considered the appellate court's ruling, clarified the legal basis on the sentence, and once again came down with a sentence of 24 years in prison for the defendant.

Our circuit court, misdemeanor court, was notoriously backlogged with cases for a very long time. The average turnaround time was 8 months. Though he was in a position to focus on other sometimes more interesting types of cases, Judge Shadid volunteered to step up and take on the mess. He swiftly eliminated the backlog and put in place a more efficient process that has radically improved the functioning of our misdemeanor court.

Judge Shadid goes above and beyond the call of duty, even in his judgeship, by holding mock trials in partnership with local high schools. This has given students invaluable insight into the criminal justice system, and I personally know of many young people whose lives have been turned around by Judge Shadid's admirable efforts to help at-risk youth.

All in all, I do not believe it is possible to find a better person to serve as a Federal court judge. I commend Senator Durbin for his recommendation of Judge Shadid and President Obama for nominating James Shadid to serve the public as a Federal district court judge in Illinois.

Once again, I thank the Committee for your consideration.

Senator DURBIN. Thank you, Congressman Schock, and I know you have to leave. We understand that.

Representative SCHOCK. Thank you.

Senator DURBIN. I would now like to recognize Senator Chambliss from Georgia.

PRESENTATION OF AMY TOTENBERG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA BY HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator Chambliss. Thank you very much, Mr. Chairman and Senator Sessions, Senator Franken, and other members of the Committee.

I am very pleased to be here today to introduce to the Committee Amy Totenberg, who has been nominated to serve as a district court judge for the Northern District of Georgia. My colleague, Senator Isakson, joins me here, obviously.

This must be the day for Harvard graduates, as Ms. Totenberg is a graduate of Radcliffe College at Harvard, as well as Harvard Law School. She came to Atlanta in 1977, after attending Harvard Law School, began working at the Law Project in Atlanta, where she concentrated on constitutional rights litigation.

She has been a solo practitioner in Atlanta for some 20 years and in addition to specializing in constitutional law, Ms. Totenberg has become a well known arbitrator and mediator, particularly in employment and civil rights cases. She served as a court-appointed monitor and mediator for the U.S. district court here in the District

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00573 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

of Columbia and has also served as a special master for the U.S. district court in Maryland on an institutional education reform case, an area of the law where she has an awful lot of expertise, as she served as general counsel to the City of Atlanta's Board of Education from 1994 to 1998.

She also has a background in academia, having taught at Emory University, one of our great law schools, as an adjunct professor from 2004 through 2007. She has also been deeply involved in our community. Ms. Totenberg has sat on the State Personnel Board, chaired a special advisory education committee to the Georgia State Board of Education, served as a member of the Governor's Educational Reform Commission, presided over the Georgia Center for Law and Public Interest, and given her time to Hands-On Atlanta, the city's largest volunteer service program.

She has a wealth of experience both inside the courtroom, as well as outside the courtroom, and I am very pleased to be here to recommend her today.

Thank you.

Senator DURBIN. Thank you, Senator Chambliss.

Senator Isakson.

PRESENTATION OF AMY TOTENBERG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA BY HON. JOHNNY ISAKSON, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator ISAKSON. Thank you very much, Senator Durbin. And I want to thank the Ranking Member and Chairman Leahy for offering us the opportunity to be here today to introduce Ms. Totenberg.

I am not an attorney and I am certainly not going to repeat the resume introduction of Senator Chambliss, but I would add that the Senator and I chair a six-member judicial review committee that reviews all the nominees presented in Georgia, and they recommended that Ms. Totenberg be presented to you for consideration for the Northern District of Georgia.

I do, however, have one bit of knowledge or expertise in an area where Ms. Totenberg has been eminently qualified, and that is in the area of public education. And I would note that today in the audience are two district court judges from the District of Columbia who have often called on Ms. Totenberg to serve them both in arbitration and mediation, as well as opinion on education law.

So I am pleased to join Senator Chambliss today to commend Ms. Totenberg to the Committee for their consideration, and I thank you for your time.

Senator DURBIN. Thank you, Senator Isakson.

Delegate Eleanor Holmes Norton.

PRESENTATION OF JAMES E. BOASBERG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA AND AMY B. JACKSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA BY HON. ELEANOR HOLMES NORTON, A U.S. REPRESENTATIVE FROM THE DISTRICT OF COLUMBIA

Representative HOLMES NORTON. Thank you very much, Chairman Durbin, Ranking Member Sessions.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00574 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

I am pleased to introduce two exceptionally well qualified nominees for the U.S. District Court for the District of Columbia.

As you know, we do not have Senators in the District of Columbia, but I have appreciated that President Obama has granted me the courtesy to recommend the U.S. attorney, the district court judges, and similar Federal law enforcement officials. In turn, I have sought to empower the residents of the District of Columbia by forming a 17-member commission of lawyers and laymen to investigate and vet and recommend to me candidates, and I consider only candidates who have come through my judicial nominating commission.

I am particularly proud of the two nominees before you today. Judge James Boasberg now serves as an associate judge for the District of Columbia Superior Court. Before that, he was an assistant attorney for the District of Columbia for some years and in private practice.

He clerked for Dorothy Nelson of the United States Court of Appeals for the Ninth Circuit, has his degrees from Yale College, Yale Law School, and Oxford University.

Amy Berman Jackson is a top practitioner in one of the District's top law firms, where she specializes in complex criminal and civil trials, litigation and appeals. Ms. Jackson also served as an assistant United States attorney for the District of Columbia, winning a number of awards from the Department of Justice while she was there.

Ms. Jackson is a cum laude graduate both of Harvard College and Harvard Law School.

The District of Columbia is the home of a plethora of highly qualified lawyers. Mr. Chairman, I believe that the two nominees I introduce today would be rated among the best by their own peers.

Thank you very much.

Senator DURBIN. Thank you, Delegate Norton. I appreciate that very much.

PRESENTATION OF JAMES E. SHADID, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS AND SUE E. MYERSCOUGH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS BY HON. RICHARD DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. I would like to say a few words about the two nominees from Illinois, Jim Shadid and Susan Myerscough, who have been nominated to fill judgeships in the U.S. District Court for the Central District of Illinois.

I am going to appeal to Senator Sessions after this hearing, assuming a favorable outcome, because we only have one active status district court judge in the Central District of Illinois. The remaining three judgeships are currently vacant. It is a large district and one judge just cannot handle it.

The Administrative Office of the U.S. Courts has determined that the Central District vacancies are a judicial emergency. So we are hoping for a timely consideration, if the nominees are approved by the Judiciary Committee.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00575 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

A word about Jim Shadid. As Congressman Schock has said, he is highly regarded in the Peoria community for his service on the state bench. He is seeking the seat that was vacated when Judge Michael Mihm took senior status.

Jim Shadid is a leading figure in the Peoria legal community. He was born in Peoria and many believe he got his start in life in a favorable way because he knew how to play ball. Specifically, he was quite a baseball player for the Bradley University Braves. He was a two-time team MVP and inducted into the Bradley Athletics Hall of Fame.

After graduation, he played a season of minor league baseball, and then turned his talents to the law. He was first appointed as circuit judge in 2001; won retention elections, which require 60 percent of the vote, I might add, in 2002 and 2008; presided over 300 trials and thousands of pleas and sentencing.

Prior to his service on the state bench, he worked as an attorney in private practice, public defender, commissioner on the Illinois Court of Claims, and assistant attorney general.

In addition to his broad experience on the bench and in the law office, he has an impressive record in the Peoria community, tenure as president of the Boys and Girls Club, and has service on the boards of numerous other organizations.

Finally, I will note that Judge Shadid was the first Arab-American to serve as a state judge in Illinois. Upon his confirmation, if the Committee gives approval, he will be the only Arab-American Federal judge in our state.

There is a large Arab-American community in Peoria, including my friend, former colleague, and current Secretary of the Department of Transportation, Ray LaHood. So I know this community is very proud of Judge Shadid.

A word about Sue Myerscough. She has been nominated to fill the Springfield-based seat vacated by the retirement of Judge Jeanne Scott, who has long been a prominent figure herself on the Springfield legal landscape.

Sue Myerscough has over 23 years of judicial experience, currently serves as an elected justice of the Illinois Fourth District Appellate Court.

A native of Springfield, she earned her BA and law degree from Southern Illinois University and began her career as a law clerk for Judge Harold Baker of the Central District. Following that, she was in private practice for 6 years. She was appointed as associate judge in 1987, elected full circuit judge in 1990; and, during her 11 years as trial judge, she presided over thousands of bench and jury trials, including the most complex civil litigation and murder trials.

In 1998, Justice Myerscough was elected to her current seat on the Illinois appellate court; in 2008, won her retention election; and, during her 12 years on that court, has authored over 1,200 decisions on a wide range of issues.

She has worked actively to promote legal education for school children and, since 2001, has served on the board of visitors for the SIU Law School. Since 1994, she has served as adjunct professor at the SIU School of Medicine, an institution where I also had the privilege of a non-paid teaching job.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00576 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Justice Myerscough was first nominated to serve as Federal district court judge 15 years ago, but never reached the point of a hearing.

Today is an important step, Judge Myerscough, and thanks for your patience. You have waited a long time, and it is my pleasure to welcome you and your family here today.

If there are no further introductions from my colleagues and others, I thank those who did come to introduce the nominees, and they will be excused to return to their important duties. Thank you all.

Now, first, we will consider Circuit Court nominee Susan Carney, and she will be brought to the table individually and questions will be asked, and then we will bring the other nominees forward.

Before she is seated, it is the custom of the Committee to administer an oath before testimony. So if you would please repeat after me.

[Nominee sworn.]

Senator DURBIN. Thank you. Let the record reflect that the nominee has answered in the affirmative.

So, first, I would like to give you, Ms. Carney, an opportunity to introduce family and friends who may be in attendance.

STATEMENT OF SUSAN L. CARNEY, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Ms. CARNEY. Thank you very much. I'd also like to thank the Chairman, the Ranking Member, yourself, Senator Durbin, Senator Dodd for his generous introduction, Senator Franken, with whom I met this morning, and the rest of the Committee for their time and consideration of my nomination. I would also like to thank Senator Birch Bayh, whose presence here today honors me.

If I could introduce my family members who are here, they could stand up perhaps. My husband, Lincoln Caplan, my husband of 31 years; my daughter, Molly Caplan; my mother, Cleo Carney, a veteran and recently retired from her long-time work; my two aunts, Dr. Maria Olgas, a nurse and professor of medical surgical nursing in Richmond, Virginia; my Aunt Kassie Olgas, long-time operating room supervisor in the Veterans' Administration, including at Hines Memorial Hospital.

My sister-in-law, Joanna Caplan; her husband, Bob Blaemire, worked for Birch Bayh. My brother, Scott Carney; my mother-in-law, Kit Caplan. And I'd also like to acknowledge my four other brothers who are watching from other venues, my 14 nieces and nephews, my sisters-in-law, and my extended family.

I'm very fortunate in having a large and wonderful family and wonderful colleagues at Yale and elsewhere, as well. So thank you very much.

Senator DURBIN. Thank you.

Ms. CARNEY. One last thing. I did want to mention my father, who died 8 years ago. He was the first lawyer I knew and gave me my first lessons in the law, and he would have been very proud to be here today.

Senator DURBIN. Thank you very much for that recognition. I might also add that we will, without objection, include statements in the record relative to nominees by Senator Joe Lieberman on be-

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00577 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

half of Susan Carney, before us now, and a statement also being made by the Chairman of the Committee, Senator Pat Leahy, will be entered, without objection.

[The statements of Senator Lieberman and Chairman Leahy appears as a submission for the record.]

Senator DURBIN. I will ask first and then defer to my Ranking Member here, Senator Sessions.

You have got an interesting background in the clients that you have had, the work that you have done in the legal field, general counsel's office at Yale University, associate general counsel of the Peace Corps. But sticking with the topic which I raised in relation to Judge Shadid, you provided representation for the Major League Baseball Players Association in the unfair labor practices action against the baseball owners during the 1994–1995 baseball strike.

To the relief of myself and baseball fans everywhere, the litigation ultimately resulted in the ending of the players' strike. Tell us about your role in that litigation.

Ms. CARNEY. I had worked at the law firm of Bredhoff and Kaiser in those years with George Cohen, who is now the director of the Federal Mediation and Conciliation Service, and Virginia Seitz, in particular, on briefing issues to the National Labor Relations Board about whether a Section 10(j) injunction should issue to prevent the unilateral imposition of the salary cap that the owners were considering at the time.

That effort, the briefing effort, I worked on researching and writing the briefs with my colleagues at Bredhoff and Kaiser. That resulted in an opinion by the National Labor Relations Board in favor of the injunction.

The injunction was subsequently sought and granted by now Justice Sotomayor in New York.

Senator DURBIN. So you have friends in high places. And you also did a lot of work with intellectual property, which is something we discuss at length in the Judiciary Committee. It is a very difficult, complicated issue, but very important, as well. And you did a lot of work on intellectual property law, particularly when you were serving as general counsel at Yale.

How would that experience in this complicated area of law enhance your perspective as a Federal judge?

Ms. CARNEY. I served as acting general counsel for about 6 months and in my—throughout the 12 years I've been at Yale, I've worked on intellectual property issues, including patent law and copyright law.

With all the technological change that we have been experiencing, the law has been changing rapidly in those areas. And there are areas that are subject to consideration by this body that—the Patent Reform Act, for example—that I think the experience I have in licensing, working on licenses for the university, working on issues related to the Digital Millennium Copyright Act, for example, that experience would serve me in good stead, as those issues are presented to the second circuit.

Senator DURBIN. I would like to ask you my last question, a general question, so that it will be part of the record.

Tell us about the pro bono and civic work that you have done even as you pursued your legal career.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00578 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Ms. CARNEY. I have focused—not having been a litigator in recent years, but more supervising litigation, although I started as a litigator, I have focused my pro bono work on community service through board memberships, largely, providing guidance and counsel, as I have participated in New Haven youth soccer and so on.

I did work extensively on one pro bono matter here in the District of Columbia when I was a resident here, but by appointment of Judge Frank Burgess in the D.C. superior court.

So I have kind of scattered my pro bono efforts in those ways. I think community service is very important and I've always tried to find ways to contribute.

At the moment and last year, I've been serving as a reading tutor. So it hasn't been legal activity, but community involvement in that way.

Senator DURBIN. Thank you very much.

I am going to recognize my colleague, Senator Sessions. And at the beginning of the hearing, I noted that if you had an opening statement, we would be happy to enter it as part of the record at the appropriate place.

Senator SESSIONS. Well, I will do that and would just note that we are moving nominees through the Committee at a rather good rate, and I will definitely be amenable to your request for your judges. They both seem to have good backgrounds. So we will look at that.

But President Obama's nominees to the district court have waited an average of 49 days for a hearing. President Bush's nominees to the district courts have waited 89 days, on average; 28 of those nominees had not received a hearing at this point in the process, and, likewise, we are moving at a pretty fast pace.

So you and the Chairman are keeping us busy. We are keeping up. The President is taking somewhat of his time in making nominations. He should not rush. But of the 85 district court vacancies today, only 33 do we have nominees from. So we cannot confirm people when we do not have a nomination.

But we should take the time to review them carefully because it is a lifetime appointment. It is not an election. It is the confirmation process and it is the only opportunity the American people have to make sure the nominees are well qualified before they are launched on the public, for good or ill.

Judge Shadid, I see you are a good baseball player. The only thing better would be a good umpire. I think baseball is a good experience for a Federal judge. A neutral umpire would be pretty good, although I noticed some of my colleagues did not like the idea of a neutral umpire in the last confirmation hearings that we have had.

Ms. Carney, you have had about 12 years now as Yale's lawyer and I understand that you have not tried or litigated any cases before the court. Have you ever tried a case yourself as lead counsel or actually been in the trial where you participated in examination of witnesses or arguments before a jury?

Ms. CARNEY. I have been primarily an appellate lawyer, Senator Sessions. I have participated in one hearing in which I examined witnesses and I participated in several depositions, but I have not tried a case to conclusion.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00579 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

As I said, my focus has been on appellate lawyering.

Senator SESSIONS. Have you argued before the court of appeals a case?

Ms. CARNEY. I have not.

Senator SESSIONS. Nor the Supreme Court.

Ms. CARNEY. No, sir.

Senator SESSIONS. Well, it is a lack. It is not a disqualifying lack. But to me, I think normally we would expect a judge to the United States Court of Appeals, one step below the Supreme Court, to have some experience in the courtroom or in the appellate arena.

Do you think that is a handicap to you and do you have any plans as to how you might overcome that?

Ms. CARNEY. Senator, I don't see it as a handicap. I would have preferred to have that experience given where I am at the moment, but I started out as a clerk for an esteemed Federal circuit judge, Levin H. Campbell, worked on many opinions with him, for him. Of course, the result was his.

I worked on appellate briefs, including Supreme Court briefs, extensively in the first chapter of my career when I was a lawyer here in Washington. I have continued to be involved in litigation since then, more as a supervisor or a co-counsel, on activities for the Peace Corps and for Yale.

And I believe that the breadth of experience that I have as a government lawyer, in private practice, and now as an in-house counsel for a major research university gives me broad exposure to the legal issues that are likely to come before the court of appeals. And so I do feel that I'm qualified for this position.

Senator SESSIONS. I would just say I do believe you learn something from actual participation before a judge. If you want to be a judge, you normally like to have seen one in action. And I do think that we should—that is a factor that weighs in my evaluation of a nominee.

I will not attempt to express the things that you can learn from that actual experience, but one of the things is that a lawyer who has practiced a lot or a judge who has been on the bench for a while, I think, understands that they are not policy-setting officials.

They have to decide the discreet dispute before them and that is what the parties expect and when they get away from that, they are damaging the system and they are not as effective as they should be.

You have had very little criminal experience. Are you familiar with the sentencing guidelines and describe your understanding of the sentencing guidelines, the importance that they play in the criminal judge system and Federal court, and the degree to which you feel guidelines should be followed.

Ms. CARNEY. I am familiar with the sentencing guidelines. I believe that they brought an important consistency to Federal sentencing throughout the United States after years of great inconsistency.

I'm familiar with the *Booker* decision that held that they were—these guidelines were no longer mandatory, but were advisory, and I believe the second circuit has extensive case law with regard to the guidelines and requires its district court judges to apply and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00580 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

calculate the sentences and the sentencing range that would be applicable were the guidelines still mandatory and that the practice is of deferring and giving weight to the guidelines in sentencing.

Senator SESSIONS. Have you formed an opinion about your personal view as to the respect the guidelines should be given?

Ms. CARNEY. Well, if I were so fortunate as to be confirmed, Senator Sessions, I would follow the Supreme Court law and the court of appeals law in the second circuit about implementing the guidelines in the post-*Booker* environment.

Senator SESSIONS. Well, I agree with you that they are valuable, too. There is no doubt it has reduced the disparity in sentencing and you have to know, which perhaps you have not had the experience to know, but judges in the very same courthouse, often on the same floor, were giving dramatically different sentences for the very same offenses. And it is like which judge you knew depended on whether you got probation or 10 years in jail, and that is what this Committee, before I got on it, from Senator Kennedy to Senator Thurman and Senator Biden and others agreed was an untenable position.

So we moved to the guidelines, but there is an erosion of their power by recent Supreme Court decisions. And I hope that as you wrestle with those issues that come before you, you will understand that there is a danger in deferring too readily to unsupported views of a trial judge who just may not be willing to—does not want to be consistent.

Tell me about your view on the death penalty. Have you expressed any views on that and do you have an opinion as to its appropriateness?

Ms. CARNEY. If I were to be confirmed, Senator Sessions, I would apply the law as it—as I read the law, the law of the second circuit and of the Supreme Court, and I feel comfortable doing that.

Senator SESSIONS. Have you expressed an opinion on the death penalty as to whether or not you think it is an appropriate sentence and if the legislature should or should not pass it?

Ms. CARNEY. I have not.

Senator SESSIONS. And you are prepared to enforce it, regardless of your personal views, in a fair and effective way.

Ms. CARNEY. Yes, Senator, I am.

Senator SESSIONS. We have had a good bit of discussion about a judge allowing empathy or their feelings for how the law affects the daily lives of American people in their decisionmaking process.

Do you believe a judge should allow their own personal, political, moral, religious or social values to influence their decisionmaking process?

Ms. CARNEY. Senator, I believe the job of a judge is to objectively apply the—and neutrally apply the law to the fact as found before him or her, as presented.

Senator SESSIONS. I know Justice Sotomayor rejected President Obama's empathy standard, as it came to be known, saying, quote, "We apply the law to the facts. We don't apply feelings to facts," closed quote.

Do you agree with that comment?

Ms. CARNEY. Yes, Senator.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00581 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Senator SESSIONS. Well, thank you for these comments. I will be submitting, I am sure, some additional questions for the record.

I will note, for all of the nominees and for the people in the audience, that you have to go through a pretty rigorous examination before you get to this chair. You have to meet with Department of Justice, you meet with the White House lawyers, you are reviewed by the ABA, the FBI does a background check, all of which is available to us and we evaluate in our analysis of the nominees.

So I would just say that we feel a responsibility, all of us do, I think, on the Committee to make sure that we fulfill that duty carefully before we cast our vote.

Thank you very much.

Ms. CARNEY. Thank you, Senator.

Senator DURBIN. Thank you, Senator Sessions.

Senator Franken.

Senator FRANKEN. Ms. Carney, as Senator Sessions mentioned and as you acknowledged, you have never tried a case to verdict. But as you replied, you have had a pretty substantial appellate practice.

How many Federal appeals have you worked on?

Ms. CARNEY. Senator Franken, I'm not exactly sure. I haven't done the count. I've worked on some appeals at Yale. I have worked on appeals when I was in practice in Washington. Maybe it's 15 cases. I couldn't say.

Some of those—that includes a Supreme Court case, which involves a petition for certiorari and so on.

Senator FRANKEN. But this is an appeals court and you have had somewhere in the ballpark of 15 appeals.

Ms. CARNEY. I couldn't say for sure, but I think that would be—that doesn't include the experience I had when I was clerking for Judge Campbell and the other brief-writing that I participated in, which is a similar exercise.

Senator FRANKEN. How many Federal appellate briefs have you written?

Ms. CARNEY. I, again, would think it's around 15, but that's appellate brief. Similar would be motions for summary judgment, motions to dismiss, arguing legal standard and analyzing cases in the motions practice, which more characterizes the litigator's practice this day than a trial practice, which my father engaged in.

Senator FRANKEN. And this is an appellate court, obviously, that you——

Ms. CARNEY. Yes, Senator.

Senator FRANKEN (Continuing). Have been nominated for. So that experience is very relevant, I would think.

Ms. CARNEY. Yes, Senator.

Senator FRANKEN. Now, Senator Sessions was talking about the job of a circuit judge is to apply the law, and I would think that could well be described—since you are abiding by decisions that are made by the Supreme Court, that the appellate judge really is an umpire, more or less.

Ms. CARNEY. Well, I think that the job is——

Senator FRANKEN (Continuing). Maybe more so than a Supreme Court justice.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00582 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Ms. CARNEY. I think that the job is to apply the law to a record that's established in the district court and because the facts are found below and the Supreme Court is directive above and one is surrounded by precedent, there are fairly narrow margins for——

Senator FRANKEN. Interpretation.

Ms. CARNEY (Continuing). Interpretation, exactly.

Senator FRANKEN. Right. So that, in a way, really is—it is narrow because it has really been defined by decisions that you adhere to. You are always going to be applying the decisions that have been made by the court, by the Supreme Court and by the appellate court, before you, right?

Ms. CARNEY. Yes, Senator.

Senator FRANKEN. So in that way, very much like an umpire, and I think that Senator Sessions can take great solace in that.

On the Supreme Court, then, you do not have to answer this, but it seems to me that you are almost defining the strike zone and it is almost an entirely different job. I would not expect you to want to even get into that.

But an important part of your work, if you are confirmed, is to interpret our work in the Congress. When you are interpreting a statute, what will you do to make sure that you are interpreting the law in line with our intent?

Ms. CARNEY. I would start with the text of the statute. I would look to other judicial interpretations of the statute, starting with the Supreme Court, of course, and within the second circuit, as well as collegial circuits and, from the text and the interpretations that had already occurred, work to understand the Congressional intent and to apply it as Congress intended.

Senator FRANKEN. Well, let me ask one last one. In the 1990's, mid 1990's, you represented a workers' union in Tennessee, after its members were exposed to depleted uranium, and I think you had an important victory there.

Can you tell us about that case?

Ms. CARNEY. That was a case in which workers had walked off the job because of a fear of imminent harm from their exposure to depleted uranium. They invoked a clause of the National Labor Relations Act, as I recall, that gave them the permission, if you will, under the statute to absent themselves in a non-strike situation.

And there was a debate between the union and the employer about whether that clause applied or whether there was really something else going on. The firm I was with, Bredhoff and Kaiser.

After a very long history in the courts and before the National Labor Relations Board, the workers' position was vindicated that this was a potential harm to them and that they were justified in invoking this section of the statute that Congress had passed.

Senator FRANKEN. Thank you, Ms. Carney, and congratulations on your nomination.

Ms. CARNEY. Thank you so much.

Senator DURBIN. Ms. Carney, thank you very much. And since there are no further questions for you at this time, we are going to excuse you. You probably will receive written questions from members who are here today and those who will look over the transcript of the record and your background before reaching their conclusions about your nomination.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00583 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

But thank you very much for being here, we really appreciate that, and for your family and friends for attending with you.

Senator Bayh, it is always good to see you and I think that Ms. Carney has at least one Senator she might recommend that you speak to on her behalf.

I would thank all those who are here and ask their consideration of the fact that we are going to stand in recess. At 3 p.m., there is a ceremony involving Members of Congress and the observance of the 9/11 anniversary that we just recently noted, I should say, and that will probably go until about 3:30 p.m.

I will try to return promptly at that moment and bring in the second panel, put them under oath, and move forward as quickly as I can.

So if there are no objections—I am not sure it would make any difference if there were—I am going to ask that this Committee stand in recess.

Senator SESSIONS. Senator Bayh, it is great to see you. Thank you for being here.

Senator DURBIN. This Committee stands in recess.

[Recess.]

Senator DURBIN. The Committee will resume consideration of the nominees. And if I could ask the district court nominees to stand behind your chairs while I administer the customary oath.

[Nominees sworn.]

Senator DURBIN. Let the record indicate that all five nominees have answered in the affirmative.

Senator Sessions has told me to start and he will try to return, as others will. As you can understand, things come and move about here.

I would like to ask each of you to take a moment and introduce your family and friends who are in attendance today, and perhaps we will start with Ms. Totenberg of Georgia.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00584 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Susan Laura Carney

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

   United States Circuit Judge for the Second Circuit

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

   Office: Office of the Vice President and General Counsel
   Yale University
   2 Whitney Avenue, 6th Floor
   New Haven, Connecticut 06510

   Residence: Hamden, Connecticut

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

   1951; Waltham, Massachusetts

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

   1975 to 1977, Harvard Law School; J.D. (*magna cum laude*), 1977
   1974 to 1975, University of Chicago Law School (no degree)
   1969 to 1973, Harvard University; A.B. (*cum laude*), 1973

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

66720.515

1998 to present
Yale University
2 Whitney Avenue
New Haven, Connecticut 06510
Deputy General Counsel (2001 – present)
Acting General Counsel (July 2008 – December 2008)
Associate General Counsel (1998 – 2001)

1996 to 1998
The Peace Corps
1111 20th Street, NW
Washington, D.C. 20526
Associate General Counsel

1994 to 1996
Bredhoff & Kaiser P.L.L.C.
805 15th Street, NW
Washington, D.C. 20005
Of Counsel

1988 to 1994
Self-employed (contract legal employment and volunteer service)
4516 47th Street, NW
Washington, D.C. 20016

1986 to 1988
Tuttle & Taylor (since dissolved)
355 South Grand Avenue
Los Angeles, California 90071
Partner (Washington, D.C., Office)

1979 to 1986
Rogovin, Huge & Lenzner (formerly Rogovin, Stern & Huge) (since dissolved)
1730 Rhode Island Avenue, NW
Washington, D.C. 20036
Partner (1984 – 1986)
Associate (1979 – 1984)

1979
Ropes & Gray
One International Place
Boston, Massachusetts 02110
Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00586 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.516

1977 to 1978
United States Court of Appeals for the First Circuit
John Joseph Moakley United States Courthouse
One Courthouse Way, Suite 2500 (current address)
Boston, Massachusetts 02210
Law Clerk to the Honorable Levin H. Campbell

Summer 1976
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, D.C. 20036
Summer Associate

1975 to 1976
Harvard Law School
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant to Visiting Professor Robert Pitofsky

Summer 1975
Transportation Systems Center
U.S. Department of Transportation
Kendall Square
55 Broadway
Cambridge, Massachusetts 02142
Research Assistant

Summer 1974
U.S. Department of Transportation
International Programs Division
1200 New Jersey Avenue, SW
Washington, D.C. 20590
Summer Intern

September 1973 to June 1974
Phillips Academy
180 Main Street
Andover, Massachusetts 01810
Teaching Fellow

Summer 1973
Student's Valet Service, Inc. (since dissolved, to the best of my knowledge)
Harvard Square
Cambridge, Massachusetts 02138
Customer Service Representative

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00587 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.517

Other Affiliations (uncompensated)

2007 to present
National Association of College and University Attorneys
One Dupont Circle, Suite 620
Washington, D.C. 20036
Director

2005 to 2008
Fine By Me (no longer an independent entity)
242 Fifth Avenue, #3L
Brooklyn, New York 11215
Director & Secretary

1998 to 2002
Women Organizing Women Political Action Committee (also known as "WOWCT")
8 Research Parkway
Wallingford, Connecticut 06492
Secretary (2000 – 2002)
Director (1998 – 2002)

1999 to 2001
New Haven Youth Soccer
P.O. Box 9298
New Haven, Connecticut 06533
Director & Secretary

1981 to 1992 (approximate)
Lady Lawyers Limited (since dissolved)
1730 Rhode Island Avenue, NW
Washington, D.C. 20036
Secretary

1985 to 1988
Harvard Law School Association of Washington, D.C.
125 Mt. Auburn Street
Cambridge, Massachusetts 02138
President (1987 – 1988)
Vice President (1986 – 1987)
Secretary (1985 – 1986)
Council Member (1989 – 1993)

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00588 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.518

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

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

Certificate of Appreciation from the Yale Corporation and Officers for outstanding service as Acting General Counsel (December 2008)
Peace Corps Inspector General's Award for "exemplary efforts in promoting the economy, efficiency, and effectiveness of the Peace Corps" (July 1998)
Peace Corps certificate of appreciation for "exemplary service and many contributions" to the Peace Corps (July 1998)
Best Bar Report, Bar Association of the District of Columbia, for Report on Court Funding (I was the Reporter and researched and wrote the report, with input from some committee members) (1993)
Department Award for Superior Performance, U.S. Department of Transportation (1974)
James B. Conant Essay Award, Harvard-Radcliffe Colleges (1970)

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

American Bar Association
Bar Association of the District of Columbia
Connecticut Bar Association
Massachusetts Bar Association
Women's Bar Association of the District of Columbia

10. **Bar and Court Admission**:

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

Connecticut, 1999
District of Columbia, 1980
Massachusetts, 1977

There has been no lapse in membership. I became an inactive member of the Massachusetts bar for approximately three years in the early 1980s, but remained a member and am currently an active member.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00589 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.519

Supreme Court of the United States, 1982
United States Court of Appeals for the First Circuit, 1978
United States Court of Appeals for the Ninth Circuit, 1982
United States Court of Appeals for the Eleventh Circuit, 1994
United States Court of Appeals for the District of Columbia Circuit, 1980
United States District Court for the District of Columbia, 1980
District of Columbia Court of Appeals, 1980

In 2004, I did not renew my membership in the bar of the United States Court of Appeals for the Eleventh Circuit because I did not anticipate future appearances before the court. In 2009, I changed my membership in the bar of the United States District Court for the District of Columbia to inactive status because I did not anticipate future appearances before the court. There has been no other lapse in membership.

11. **Memberships**:

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

New Haven Reads
Tutor (2009 – present)
Silliman College, Yale University
Fellow (2000 – present)
National Association of College and University Attorneys (1999 – present)
Annual Conference Program Committee (2001 – 2005 & 2008 – 2010)
Board of Directors (2007 – 2010)
Committee on Board Operations (2009 – 2010)
Finance and Audit Committee (2005 – 2008)
Task Force on Annual Conference Programming (2000 – 2001)
Audubon Society of Massachusetts (intermittent over years, current member)
New Haven Bird Club (approximately 2006 to present)
Ridge Top Pool and Tennis Club, family membership in North Haven, Connecticut (1998 through approximately 2004)
WOWPAC (Women Organizing Women Political Action Committee)
Board of Directors (1998 – 2002)
Secretary (2000 – 2002)
New Haven Youth Soccer
Board of Directors & Secretary (1999 – 2001)
Historical Society of the District of Columbia Court of Appeals
Interviewer (approximately 1995 – 1998)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00590 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.520

Harvard Club of Washington, D.C. (approximately 1986 – 1998)
Schools and Scholarships Committee (approximately 1986 – 1998)
Area Co-Chair (1995 – 1998)
D.C. Co-Chair (1992 – 1995)
Harvard Law School Association of Washington, D.C.
President (1987 – 1988)
Vice President (1986 – 1987)
Secretary (1985 – 1986)
Council Member (1989 – 1993)
Lady Lawyers Limited, Secretary (approximately 1981-1992) (non-profit incorporated by some of my male and female law firm colleagues and by me; used purely as a fraternal organization)
Palisades Pool, Montgomery County, Maryland (mid- to late- 1990s)
Merrimack Pool, Bethesda, Maryland (public) (late 1980s, early 1990s)
Ron Freeman Chorale, Arlington, Virginia (early 1980s)
The Wilderness Society (approximately 1983 – 1984)

I have made financial contributions to a number of charitable organizations over the years, including various health research, cultural, environmental, disaster relief, neighborhood civic, and other types of organizations. I have not included in the list above any organizations to which I only have given funds and where I have not participated in programmatic activities, although the organizations' development protocols may call me a "member." Although there may be others I have not found in my records, these organizations include: Greater Boston Youth Symphony; Smith College Museum of Art; Metropolitan Museum of Art; Bruce Museum; Artspace; Himalayan Institute; Metropolitan Opera; Peabody Essex Museum; Smithsonian Institution; Eli Whitney Museum; St. Columba's Nursery School; Georgetown Day School; Foote School; Hopkins School; Hamden High School; Harvard College; Harvard Law School; Oxfam America; Amnesty International; American Cancer Society; American Heart Association; Women's Health Research at Yale; Planned Parenthood; WLIU; WMNR; WPKN; Connecticut Food Bank; Community Soup Kitchen; New Haven Legal Assistance; Radcliffe Institute for Advanced Study; NARAL; Children and Adults with Attention-Deficit/Hyperactivity Disorder; American University Park Citizens Association; Whitneyville Citizens Association; American Automobile Association; National Organization of Women; Make a Wish Foundation of Eastern Virginia; Branford Hospice; Friends of Outer Island; Sudan Aid Fund; New York Firefighters; Red Cross; Edgerton Park Conservancy; So Others Might Eat; United Way; Save the Children; Alliance for Justice; Farmworker Justice; Hamden Hall School; ACES; Mothers Against Drunk Driving; Neighborhood Music School; Creative Arts Workshop; Salvation Army; My Sister's Place; University of Chicago Law School; Hospice of Northern Virginia; Harvard-Radcliffe Collegium Musicum Foundation; Boston Children's Hospital; Parents' Foundation for Transitional Living; Friends of the Falls Library; WAMU; WETA; CARE; National Women's Law Center; All Our Kin.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00591 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.521

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

I have not to my knowledge held membership in any organization that invidiously discriminates or formerly discriminated on the basis of race, sex, or religion, or national origin.

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

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

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

"Research Misconduct: Dealing with Allegations of Academic Fraud and Other Transgressions," NACUA Annual Conference, Chicago, June 2006 and Society of University Lawyers, Melbourne, Australia October 2006. Copy supplied.

"University-Industry Collaborations: Two Perspectives (the University View)," American Health Lawyers Association Life Sciences Institute, Baltimore, May 2006. Copy supplied.

"Intellectual Property in Action," (co-author) NACUA Annual Conference, Vancouver, June 2004. Copy supplied.

"Faculty Startups: The Tangled Web," NACUA Annual Conference, June 2001 (reprinted in NACUA compendium). Copy supplied.

"The Research Institution: A Primer," NACUA Annual Conference, San Diego, June 2000 (reprinted in NACUA compendium). Copy supplied.

Yale Institutional Publications

New England Association of Schools and Colleges, Yale Institutional Self- study Report (editor and co-author), Standard 11 (2009). Copy supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00592 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.522

Working Globally: Legal Considerations (editor and co-author), Yale (2007). Copy supplied.

Guide to Business Agreements and Contracts (editor and co-author), Yale (2004). Copy supplied.

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

This list represents the reports, memoranda and policy statements I have identified through searches of my files and Internet databases. I have tried my best to list all such documents to which I contributed, although there may be some that I have not been able to identify or locate.

"A Call for Adequate Funding for the District of Columbia Courts," Report of the D.C. Bar's Task Force on Court Funding (January 28, 1993). I served as Reporter of the Task Force, which called for preservation of sufficient funding to operate the District of Columbia Courts. The report was named Best Bar Report of the year. Copy supplied.

Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias and its Special Committee on Gender (contributor, 1992-1993) (Professor Vicki Jackson, Professor Susan Deller Ross, and Susan M. Liss, Esq., Co-chairs). Reprinted at 84 Geo. L.J. 1657 (1996). In support of this effort, I researched and prepared a chronology of significant events in women's practice of law in the District of Columbia, among other tasks. Copy supplied.

Historical Society of the District of Columbia Circuit, Interviews with Helen Patton Wright, widow of the Hon. J. Skelly Wright. At the request of the D.C. Circuit Historical Society and as part of its Oral History Project, I conducted four interviews of Mrs. Wright in 1995 and 1996, covering her life and in particular her life as the wife, then widow, of Judge J. Skelly Wright, U.S. District Judge in Louisiana and then U.S. Circuit Judge for the D.C. Circuit. These were transcribed, reviewed by me, and published by the Society in 1999. Copy supplied.

Three Mile Island, A Report to the Commission and to the Public, by Mitchell Rogovin and George T. Frampton (1980). (I provided editorial assistance and worked with one of the substantive subgroups contributing to the report.) Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00593 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.523

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter to Judge James P. Jones, U.S. District Judge for the Western District of Virginia re: United States v. Purdue Frederick Co., No. 1:07-cr-29 (July 3, 2007). Copy supplied.

I do not recall any other testimony, official statements, or other communications that I provided or that others presented on my behalf.

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

This list represents the presentations I have identified through searches of my files and Internet databases and discussions with others to help refresh my memory. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

In November 2009, I gave brief remarks to incoming Board members of the National Association of College and University Attorneys, reflecting on my experience as a Board member of the organization. I have no notes, transcript, or recording.

"Research Misconduct – An International Challenge," Society of University Lawyers, Melbourne, Australia, October 2006. PowerPoint deck supplied.

"Thoughts on Research Misconduct," National Association of College and University Attorneys (NACUA) Annual Conference, Chicago, June 2006. Audio recording supplied on CD.

"Industry-University Research Alliances: Two Perspectives (the University View)" (co-presenter), American Health Lawyers Association Life Sciences Institute, Baltimore, May 2006. PowerPoint deck with notes supplied.

"Complexities of Legal Agreements between Cancer Centers and Industry" (co-presenter), Association of American Cancer Institutions, Washington D.C., October 2005. PowerPoint deck with notes supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00594 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.524

"IP Clauses in Action" (co-presenter), NACUA Annual Conference, Vancouver, June 16, 2004. Audio recording supplied on CD.

"Intellectual Property at the Research University Two Decades After the Bayh-Dole Act," First Circuit Judicial Conference, Boston, September 2003. Notes supplied.

"Human Subjects Research: the Basics" (moderator), NACUA Annual Conference, Boston, June 2002. Audio recording supplied on CD.

"Now what do we do? Advanced Topics in Human Subjects Research," NACUA Annual Conference, Boston, June 2002. I have no notes, transcript, or recording.

"Is the Grass Greener Over There?" (moderator), NACUA Annual Conference, Boston, June 2002. Audio recording supplied on CD.

"Faculty Entrepreneurs and Startup Companies" NACUA Annual Conference, San Diego, June 2001. Notes supplied.

"The Research Institution: A Primer," NACUA Annual Conference, Washington, D.C., June 2000. Notes supplied.

I have also introduced speakers or sessions informally in a variety of settings. These include, for NACUA: "Difficult Conversations" presentation by Debbie Goldstein, Triad Consulting, two sessions (Toronto, 2009); and "Handling the Tough Research Misconduct Case, from Allegation to Adjudication" (Vancouver, 2004). Similarly, in 1987-88, as President of the Harvard Law School Association of Washington, D.C., I organized programs and introduced speakers at regular luncheons. Records available to me today show that those sessions included the following: Steven Brill, "The Transformation of American Lawyering" (Mar. 24, 1988); Donald Flexner, Arthur Rothkopf, and James Jones, "Expanding the Bounds of the Law Firm [with Non-law Affiliates]: Conflicts of Interest or a New Frontier?" (Dec. 9, 1987); L. William Seidman, Chairman FDIC, "Deregulation of Financial Institutions," (Nov. 4, 1987); Sen. William Proxmire, (Oct. 19, 1987); Fred Wertheimer and Asst. Attorney General John Bolton, "The Independent Counsel Statute: A Necessity or a Mistake?" (Aug. 5, 1987). I have no notes, transcripts, or recordings from my introductions of these speakers.

In addition, as part of my duties at Yale, I have conducted informational sessions on legal issues for Yale employees. These have included, for example, training sessions on the range of federal legislation and regulations that apply to university operations. Similarly, while Associate General Counsel of the Peace Corps (1996 – 1998), I conducted internal trainings of Peace Corps staff on various legal issues.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00595 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.525

Sometime during 1967-68, my high school exchange year in France, I spoke to a formal gathering in my host community in the Town of Rombas, France. I also gave several local presentations to clubs and associations in my home town on my return to Massachusetts. I do not recall the exact dates or venues. I have no transcripts or recordings of these programs and have not located any notes.

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

I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate.

Athena Y. Jiang, "Ginsburg Speaks on Women in Law," HARVARD CRIMSON Sept. 21, 2008. Clip supplied.

Ross Goldberg, "Univ. Denies Company's Patent Claim," YALE DAILY NEWS, Dec. 7, 2005. Clip supplied.

Ross Goldberg, "Patent Holder Seeks Royalties from University," YALE DAILY NEWS, Nov. 18, 2005. Clip supplied.

Jared Savas, "Doctors Sue Yale over Free Expression," YALE DAILY NEWS, Sept. 21, 2005. Clip supplied.

TV news interview re Tylenol scare (as a consumer in Rodman's Drug Store, Washington, DC), 1982. I do not recall the exact date or the interviewer and I have no video or transcript.

"Two Weston Students Selected to Spend Senior Year Abroad," THE TOWN CRIER (Weston, MA), Mar. 13, 1969. Clip supplied.

"Exchange Students Give Impressions of Visits," THE NEWS-TRIBUNE (Waltham, MA) 1968. Clip supplied.

"Une charmante ambassadrice américaine: Miss Suzanne CARNEY" Aug./Sept. 1967 (I have been unable to identify the publication name). Clip supplied.

Fred Brady, "Pageantry Widens 9-Year-Old Eyes," BOSTON HERALD, approximately Jan. 20, 1961. Clip supplied.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00596 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.526

I have not held judicial office.

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

   i. Of these, approximately what percent were:

   jury trials? ___%; bench trials ___%

   civil proceedings? ___%; criminal proceedings? ___%

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00597 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.527

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

    I have not served as a judge.

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

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

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

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

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

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

    I have not held public office, nor have I been a candidate for public elective or appointed office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

    I have not held office in or rendered service to any political party. In 2004, I canvassed in Pennsylvania for Senator John Kerry's presidential campaign and on Election Day I worked at local election headquarters in Allentown to assist in resolving voter registration and ballot disputes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00598 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.528

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

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

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

I clerked for Judge Levin H. Campbell, on the United States Court of Appeals for the First Circuit, from August 1977 to August 1978.

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

I practiced part-time from my home at 4516 47th St., NW, Washington, D.C., from approximately 1988 through 1993. During that time, I did work for the Bar Association of the District of Columbia, Georgetown University, and the law firm Swidler & Berlin, among others.

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

1979
Ropes & Gray
One International Place
Boston, Massachusetts 02110
Associate

1979 to 1986
Rogovin, Huge & Lenzner (since dissolved)
1730 Rhode Island Avenue, NW
Washington, D.C. 20036
Associate (1979 – 1984)
Partner (1984 – 1986)

1986 to 1988
Tuttle & Taylor (since dissolved)
355 South Grand Avenue
Los Angeles, California 90071
Partner (Washington, D.C., Office)

1994 to 1996
Bredhoff & Kaiser P.L.L.C.
805 15th Street, NW
Washington, D.C. 20005
Of Counsel

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00599 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.529

1996 to 1998
The Peace Corps
1111 20th Street, NW
Washington, D.C. 20526
Associate General Counsel

1998 to present
Yale University
2 Whitney Avenue
New Haven, Connecticut 06510
Associate General Counsel (1998 – 2001)
Acting General Counsel (July 2008 – December 2008)
Deputy General Counsel (2001 – present)

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

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

b. Describe:

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

Following my clerkship, I worked as an associate and then a partner in private law practice. Initially, I focused on litigation in federal and state courts. While affiliated with Rogovin, Huge & Lenzner (1979 – 1986), I gradually took on transactional work as well. At Tuttle & Taylor (1986 – 1988), I continued to do transactional work, focusing with my partners on serving as lead counsel to a turnaround management firm for a large set of bankrupt limited partnerships related to the savings and loan association collapses of those years.

I stepped back from full-time law practice in the law firm context for several years for family reasons. During this period, I worked on a large copyright case in federal district court and a variety of other legal projects. Thereafter, my practice turned back to appellate brief-writing, primarily, as Of Counsel at the Washington, D.C. firm Bredhoff & Kaiser.

From 1996 to 1998, as an associate general counsel of the Peace Corps, I undertook a broad range of legal support for the organization, including counseling with regard to internal adjudicatory mechanisms, working with U.S. Attorney's Offices to defend the agency in litigation, developing tools for effective preventive lawyering, and counseling on other matters.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00600 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.530

Since 1998, I have practiced law as in-house counsel at Yale University, one of the major research universities in the country and world. Since 2001, as Deputy General Counsel, I have been the second principal legal officer of the University, and in 2008, I served on an acting basis as the University's chief legal officer for six months. Yale is a large and complex entity—in addition to the well-known academic and research operations, it runs four internationally known museums; it operates power plants; it runs a health plan, offers outpatient clinical services, and its faculty helps staff a hospital; and it provides Internet and computer services to most members of its community of some 22,000 individuals. Its operating budget is more than $2 billion annually. Thus, my work in the counsel's office has demanded versatility and breadth, in addition to the ability to give timely and accurate advice.

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

My typical clients, both in the law firm context and in-house, have been governmental (Peace Corps) or large non-profit organizations, such as universities, labor unions, environmental organizations, and professional trade associations (such as the American Psychiatric Association).

When I came to Yale in 1998, my portfolio focused on research, intellectual property, technology transfer, and information technology. In 2001, when I became Deputy General Counsel, I began to advise on conflicts of interest in research, international affiliations, federal law regarding international transactions, relationships with major research sponsors, restrictions on research related to bond issuance, large commercial matters, and more. At the request of the Vice President and General Counsel, I also focused on developing instructional tools about legal issues for the Yale community.

As Acting General Counsel from July through December 2008, I worked on the full range of legal issues that confront the University, including real estate matters concerning state regulation of geothermal wells; on the terms of large gifts and various investment-related matters; on the operation of a facility that houses a summer music festival; and on sensitive employment and student matters.

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

Over my career, I estimate that approximately 40 percent of my practice has been in litigation and 60 percent in counseling or transactional work. I have appeared in court occasionally.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00601 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.531

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 15%
   3. other courts:
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 98%
   2. criminal proceedings: 2%

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

Having spent my law career as an appellate lawyer and in-house counsel, I have not tried cases to verdict, judgment, or final decision.

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

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

As an associate at Rogovin, Stern & Huge in 1979 and 1980, I assisted lead counsel Joel I. Klein in drafting the petition for certiorari and merits briefs in one case before the Supreme Court, *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981). We represented Pennhurst Parents-Staff Association, one of several petitioners in cases heard together under the *Halderman* umbrella.

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

a. the date of representation;

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00602 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.532

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

1. In re Estate of Ellen B. Stoeckel, No. 08-000207 (Northwest Corner Probate Court, Litchfield County, Connecticut) Charles R. Vail, Probate Judge.

This Probate Court matter, active from 2008 through 2009, concerned trust interpretation and administration. Under the terms of the trust at issue, Yale conducts a summer music festival and arts program on the former estate of the settlor. The terms required that a "duly organized trust company" serve as trustee. When the long-time corporate fiduciary tendered its resignation in 2008, Yale sought to reform the trust to provide a new management structure in light of changed circumstances since the trust's establishment in the 1930s.

I worked for approximately 18 months with Yale's outside counsel, Keith Bradoc Gallant, negotiating with counsel for the other trustees and with the Connecticut Assistant Attorney General charged with this matter. I was closely involved in drafting the brief in support of Yale's application and also participated with other counsel at the Probate Court hearings. The Probate Court granted the application and issued a lengthy memorandum of decision.

Yale Outside Counsel: Keith Bradoc ("Brad") Gallant (Day Pitney LLP, One Audubon Street, New Haven, CT 06511 (203) 752-5025). For the individual trustees and Bank of America: Robert H. Smith (Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103 (860) 275-8266). For the State of Connecticut: Karen Gano, Assistant Attorney General (55 Elm Street, Hartford, CT 06141 (860) 808-5108)

2. Johnson v. Schmitz, 119 F. Supp. 2d 90 (D. Conn. 2000) (Arterton, J.) (decision on motion to dismiss); 237 F. Supp. 2d 183 (D. Conn. 2002) (Arterton, J.) (decision on motion to enforce settlement agreement)

As Deputy General Counsel at Yale, around 2000-2002, I worked with Yale's trial counsel, Patrick Noonan, preparing the defense of the University and two Yale faculty members who were sued by a doctoral student. The student claimed that faculty members had misappropriated his ideas and that the University failed to protect him from or properly investigate the alleged misconduct. Yale moved to dismiss. The court granted in part and denied in part the motion, permitting plaintiff's claims for breach of contract, breach of fiduciary duty, and negligence to go forward. *Johnson v. Schmitz*, 119 F. Supp. 2d 90, 105 (D. Conn. 2000). After trial, the jury returned a verdict for the University and the faculty members.

My participation in this matter focused on analyzing intellectual property issues and managing the student's earlier administrative appeal, to the National Science Foundation, of the University's adjudication of the student's allegations. During the administrative appeal (in which Yale prevailed), I was also responsible for engaging an expert witness who subsequently testified on Yale's behalf at trial.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00603 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.533

Yale Outside Counsel: Patrick Noonan (Donahue Durham & Noonan, PC, Concept Park, 741 Boston Post Road, Guilford, CT 06437, (203) 458-9168). For Mr. Johnson: Daniel S. Blinn (Consumer Law Group, LLC, 35 Cold Spring Road, Suite 512, Rocky Hill, CT 06067, (860) 571-7457).

3. Fenn v. Yale Univ., 283 F. Supp. 2d 615 (D. Conn. 2003) (Droney, J.) (findings of fact and conclusions of law after bench trial); 393 F. Supp. 2d 133 (D. Conn. 2004) (Droney, J.) (denying motion to dismiss counterclaims); 2005 U.S. Dist. LEXIS 1827 (D. Conn. Feb. 8, 2005) (Droney, J.) (supplemental findings of fact and conclusions of law) (Droney, J.); *aff'd by* 184 Fed. Appx. 21 (2d Cir. 2006) (Straub, Meskill, Katzmann, JJ.).

From approximately 2002 through 2006, I worked with Vice President and General Counsel Dorothy K. Robinson and outside counsel at Wiggin & Dana to defend Yale's intellectual property rights against claims by a former faculty member, Dr. Fenn, who had developed an invention in the field of chemical mass spectrometry. Under the University and Small Business Patent Procedures Act, 35 U.S.C. §§ 202 et seq. (commonly known as the "Bayh-Dole Act"), universities that receive federal research funds may retain title to and license inventions developed with that funding, sharing royalties with the inventor pursuant to University policy. Dr. Fenn, however, patented the invention in his own name without disclosing its significance to Yale, and then licensed the invention to a local company in which he had an ownership interest. When Yale learned about the patent, it asked Dr. Fenn to assign the patent to it in accordance with the University's patent policy. Dr. Fenn refused. The company to which Dr. Fenn licensed the invention then asked Yale to enter into a licensing agreement that would cover the invention. Yale did so. *See* 283 F. Supp. 2d 615 (D. Conn. 2003). Dr. Fenn sued Yale, alleging torts including conversion and tortious interference. Yale counterclaimed, seeking an accounting and assignment to Yale of the patent in question. After a bench trial, the district court held that the patent was rightly Yale's. The court directed that the patent be assigned to Yale and awarded Yale royalties earned on the patent and attorneys' fees. *See* 2005 U.S. Dist. LEXIS 1827, at *23.

Dr. Fenn appealed to the United States Court of Appeals for the Second Circuit, arguing that a patent license form signed by an administrator at the National Institutes of Health established that NIH had determined the patent was owned by Dr. Fenn, not Yale. The Court of Appeals rejected that contention and affirmed the district court's judgment in favor of Yale. *Fenn v. Yale Univ.*, 184 Fed. Appx. 21 (2d Cir. 2006).

Yale Outside Counsel: William Doyle (now retired) and Jonathan Freiman (Wiggin & Dana, 265 Church Street, One Century Tower, New Haven, CT 06508, (203) 498-4584). For Dr. Fenn: Hubert Santos (Santos & Seeley, P.C., 51 Russ Street, Hartford, CT 06106, (860) 249-6548); Brenda Sharton (Goodwin Procter LLP, Exchange Place, 53 State Street, Boston MA 02109 (617) 570-1000)

4. Mendez v. Gearan, 947 F. Supp. 1364 (N.D. Cal. 1996) (Henderson, CJ.) (denying motion to dismiss); 956 F. Supp. 1521 (N.D. Cal. 1997) (Henderson, CJ.) (granting in part and denying in part cross-motions for summary judgment)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00604 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.534

The case involved a Rehabilitation Act challenge to Peace Corps' medical screening protocols and their application to Plaintiff Mendez. (All of the events at issue pre-dated my tenure at Peace Corps.) After contingent acceptance for service as a volunteer overseas (the contingency called for her to satisfy a medical examination), Plaintiff Mendez reported to Peace Corps that she was being medicated for a depressive mood disorder. Pursuant to then-existing Peace Corps guidelines, the Medical Service required her to defer the start of her service for one year, and then to submit a re-evaluation of her condition. (This protocol had developed in light of difficulties in medically supporting volunteers being medicated for psychiatric conditions while overseas, concerns about the deterioration of such conditions during service abroad, Peace Corps' limited medical staff, and other limitations in medical support available for foreign volunteer placements.) The agency's decision was not individually-tailored in the first instance but was subject to administrative appeal. Ms. Mendez chose not to appeal the ruling internally at Peace Corps and instead filed suit.

The district court determined that Ms. Mendez was not required to exhaust her administrative remedies before filing suit because her cause of action arose under the Rehabilitation Act (which has no exhaustion requirement) rather than the Administrative Procedure Act (which requires plaintiffs to pursue administrative remedies first). 947 F. Supp. at 1370-1371. As Associate General Counsel of Peace Corps arriving at the agency shortly before the 1996 decision was handed down, I worked with Assistant U.S. Attorney Hemann on Peace Corps' subsequent motion for summary judgment and defense against Plaintiff Mendez's cross-motion. The district court granted in part and denied in part each motion, ordering the agency to evaluate Ms. Mendez's condition and ability to serve on an individualized basis. 956 F. Supp. at 1529-30.

For Peace Corps: John Hemann, Assistant U.S. Attorney, San Francisco (Mr. Hemann is now at Morgan Lewis, One Market, Spear Street Tower, San Francisco, CA (415) 442-1355). For L. Mendez: Kent Jonas, Graham & James (Mr. Jonas is now at Thelan LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105, (415) 371-1200; kjonas@thelan.com).

5. Thornquest v. King, 82 F.3d 1001 (11th Cir. 1996) (Black, Barkett, and Roney, JJ).

Plaintiff faculty members of Brevard Community College ("BCC") alleged that they had been discharged, transferred, or denied benefits in retaliation for their union activity and vocal criticism of the BCC administration, in violation of their federal and state constitutional rights to free expression and substantive due process. They also challenged as unconstitutional BCC's "dissent" policy, which restricted "dissent" on campus to a small "designated demonstration area" away from the campus' main performance arts center and gave BCC's President the authority "to delineate types of acceptable and unacceptable dissent." 82 F.3d at 1004.

My involvement with the case was on the appeal, after the district court granted summary judgment to all defendants on all claims. As Of Counsel at Bredhoff & Kaiser from 1994

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00605 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.535

to mid-1996, I participated in briefing plaintiff faculty members' appeal from summary judgment on their Section 1983 claims for unconstitutional retaliation against administrators and trustees of BCC. We won a partial reversal and a remand. I did not participate in the litigation on remand.

For Thornquest, et al.: Robert A. Chanin, Jeremiah A. Collins, Susan L. Carney, Page Kennedy, and Andrew Roth (Bredhoff & Kaiser, 805 Fifteenth Street NW, Washington, D.C. 20005, (202) 842-2600); John J. Chamblee (Law Offices of John J. Chamblee, Jr., 202 W. Cardy Street, Tampa, FL 33606, (813) 251-4542), Thomas A. Brooks (Tallahassee, FL). For Brevard Community College: Jesse S. Hogg (Miami, FL); Joe D. Matheny (Titusville, FL).

6. Silverman v. Major League Baseball Player Relations Comm., 880 F. Supp. 246 (S.D.N.Y. 1995) (Sotomayor, J.), *aff'd by* 67 F.3d 1054 (2d Cir. 1995) (Newman, Winter, Mahoney, JJ).

As Of Counsel at Bredhoff & Kaiser in 1994-1995, I worked with colleagues representing the Major League Baseball Players' Association (MLBPA) in an unfair labor practices action against the Major League Baseball Player Relations Committee and its member clubs ("Owners"). During difficult negotiations for a new collective bargaining agreement and with the players on strike, the Owners unilaterally imposed a salary cap, and made other changes in the terms and conditions of the players' employment. We sought an injunction restoring the status quo under Section 10(j) of the National Labor Relations Act. The Regional Director of the National Labor Relations Board (Mr. Silverman) adopted MLBPA's position that a violation of the Act had occurred and injunctive relief was appropriate. He then successfully sought the injunction in the district court. *Silverman v. Major League Baseball Player Relations Committee, Inc.*, 880 F. Supp. 246 (S.D.N.Y. 1995) (Sotomayor, J.). The issuance of the injunction was upheld on appeal to the Second Circuit. 67 F.3d 1054 (2d Cir. 1995). The district court's injunction restored the terms and conditions of employment under the expired contract and required the Owners to return to the bargaining table. The ruling caused an end to the protracted players' strike.

For MLBPA: George Cohen, Virginia Seitz, and Susan L. Carney, Bredhoff & Kaiser, 805 Fifteenth Street, NW, Washington, D.C. 20500 (Mr. Cohen is now Director, Federal Mediation and Conciliation Service, 2100 K Street NW, Washington, D.C. 20427, (202) 606-8101, and Ms. Seitz is now a partner at Sidley Austin LLP, 1501 K Street NW, Washington DC 2005, (202) 736-8015.) For the PRC: Douglas L. Leslie (Mr. Leslie is a Professor of Law at Virginia Law School, (434) 924-3853). For the National Labor Relations Board: Ellen A. Farrell, Assistant General Counsel.

7. Oil, Chem. & Atomic Workers Int'l Union v. National Labor Relations Bd., 46 F.3d 82 (D.C. Cir. 1995) (Edwards, Ginsburg, and Tatel, JJ.), *cert. denied*, 516 U.S. 821 (1995), *on remand*, 329 NLRB 602 (1999), *vacated by* 296 F.3d 384 (6th Cir. 2002), *cert. denied*, 537 U.S. 1106 (2003).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00606 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.536

As Of Counsel at Bredhoff & Kaiser, I participated in briefing this case on behalf of plaintiff union at the Court of Appeals for the D.C. Circuit and then on remand before the National Labor Relations Board.

The case involved the interpretation of Section 502 of the Labor Management Relations Act, 29 U.S.C. § 143. Section 502 provides that employers may not treat good faith "quitting of work" in response to "abnormally dangerous conditions" as a "strike." In this case, employees working at a Tennessee arms production plant engaged in a work stoppage over health concerns arising from exposure to depleted uranium. (Depleted uranium dust particles had been associated with cancer and posed a threat of toxicity to the kidneys.) Under established principles of labor law, workers who strike in response to unfair labor practices are protected from replacement during the period of the strike. In this case, the employer treated employees as "economic strikers" and hired replacement workers. The employee union members challenged the employer's actions, asserting that a work stoppage under Section 502 should be deemed the equivalent of an unfair labor practices strike, such that the employer could not replace the workers. A divided National Labor Relations Board dismissed the employees' complaint.

We filed an appeal from the Board's dismissal with the D.C. Circuit. The Court of Appeals rejected the concurrence's "sole cause" theory as "patently meritless," 46 F.3d at 88. That left the Board's order supported by the opinion of just two members. Accordingly, the Court of Appeals concluded that "the Board as a whole has failed to articulate an appropriate legal standard for the resolution of this case," and remanded for reconsideration. *Id.* at 92.

I also participated in the briefing before the Board, on remand. In those proceedings, the Board rejected as unduly burdensome the earlier plurality's test for establishing good faith belief of abnormally dangerous conditions. It held that the employees would be entitled to Section 502 protection if they identified "ascertainable, objective evidence" supporting their belief of abnormal danger. 329 NLRB at 603. Applying that test, the Board determined that the employees' actions were protected under Section 502. (The Sixth Circuit subsequently vacated the Board's opinion in light of the 17 years that had elapsed since the time of the initial offense, in 1981. *See* 296 F.3d 384 (6th Cir. 2002), *cert. denied*, 537 U.S. 1106 (2003). I did not participate in the Sixth Circuit appeal.)

For OCAW: George Cohen, Jeremiah Collins, Susan L. Carney, Bredhoff & Kaiser, 805 15th Street NW, Washington, DC 20005, (202) 842-2600. (Mr. Cohen is now Director, Federal Mediation and Conciliation Service; 2100 K Street NW, Washington, D.C. 20427, (202) 606-8101; Mr. Collins is a partner at Bredhoff & Kaiser.) For the NLRB: John Fawley, Attorney, NLRB, Linda R. Sher, Acting Associate Gen. Counsel, and Aileen A. Armstrong, Deputy Associate General Counsel (Both Ms. Sher and Ms. Armstrong still practice at the National Labor Relations Board, 1099 14th Street NW, Washington, D.C. 20570.) For TNS, Inc.: William M. Earnest (Mr. Earnest is currently practicing at 800 International Tower, 229 Peachtree Street NE, Atlanta, GA).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00607 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.537

8. Pennhurst State Sch. and Hosp. v. Halderman, 451 U.S. 1 (1981) (opinion by Rehnquist J, for Burger, Stewart, Powell, Stevens, JJ.) (Blackmun, J., concurred in part and concurred in the judgment; White, Marshall and Brennan, JJ., dissented).

As an associate at Rogovin, Stern & Huge in 1979 and 1980, I assisted lead counsel Joel I. Klein in drafting the petition for certiorari and merits briefs for Pennhurst Parents-Staff Association (PPSA)—the petitioner in one of four related appeals heard together with the *Halderman* suit.

Pennhurst State School & Hospital was a residential facility for developmentally-disabled individuals run by the State of Pennsylvania. A group of residents and their representatives filed suit in the Eastern District of Pennsylvania alleging that conditions at the facility violated their rights under the Constitution, the Rehabilitation Act, a state statute, and the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6010 et seq. Among other forms of relief, the plaintiffs sought an injunction requiring the State to close the facility and create community living arrangements.

Parents of other individuals living at Pennhurst opposed the movement to close it. These parents wanted to see Pennhurst improved rather than closed, and were concerned that community living arrangements would not provide suitable care for all developmentally-disabled individuals. These parents and certain staff at the facility formed PPSA, which became an intervenor in the action.

Before I became involved in the case, the district court had issued an injunction ordering the State to close Pennhurst, and to create and fund community living arrangements and employment opportunities for the residents. 446 F. Supp 1295, 1326-29 (E.D. Pa. 1977). That order had been affirmed in major part by the Third Circuit. The Court of Appeals declined to order the State to close the facility or find alternative employment for its residents, but did order the State to undertake individual evaluations of each Pennhurst resident and to develop a plan favoring community placements. 612 F.2d 84, 116 (3d Cir. 1979). The Third Circuit based its ruling on the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6010 et seq., which it held created a substantive right to "appropriate treatment, services and habilitation" in "the setting that is least restrictive of . . . personal liberty." In the alternative, the Court of Appeals held that Pennsylvania's Mental Health and Mental Retardation Act created a state statutory right to habilitation.

My involvement in the case began after the Third Circuit's ruling. The PPSA, the State, and the City of Philadelphia appealed to the Supreme Court, which granted certiorari and reversed. The Supreme Court held that the Developmentally Disabled Assistance and Bill of Rights Act did not create a substantive right against the states to habilitation in the least restrictive setting. The Court found that the Act had been passed pursuant to the spending power of Congress rather than its power to implement the guarantees of the Fourteenth Amendment. It therefore assessed whether Congress intended to impose affirmative obligations on states receiving funding under the Act to overhaul their systems of caring for the developmentally disabled so that they satisfied the "least

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00608 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.538

restrictive setting" standard. 451 U.S. 1, 16-23. Finding no such expressions of intent, the Court concluded that the Third Circuit had "failed to recognize the well-settled distinction between congressional 'encouragement' of state programs and the imposition of binding obligations on the States." It therefore remanded for further proceedings, including reconsideration of the state statutory and federal constitutional questions. *Id.* at 31-32.

(On remand, the Third Circuit affirmed its prior holding that Pennsylvania statutory law required the State to place Pennhurst residents in the least restrictive setting. The Supreme Court reversed again, this time on Eleventh Amendment grounds. 465 U.S. 89 (1984). I did not participate in the later litigation, which was handled on behalf of PPSA by Mr. Klein and Mr. Farr, who were no longer at the Rogovin firm, and their new colleagues.)

For the Commonwealth of Pennsylvania, et al.: Allen C. Warshaw, Deputy Attorney General, Commonwealth of Pennsylvania (Mr. Warshaw is now the Chief Counsel, Department of Welfare, State of Pennsylvania, 333 Market Street, 17th Floor, Harrisburg, PA 17101 (717) 783-6563.) For the Mayor of Philadelphia: Alan J. Davis, City Solicitor (Mr. Davis is now Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania, 820 Adams Avenue, Suite 170, Trooper, PA 19403, (610) 650-8210.) For the Suburban Counties: Thomas Kittredge (Mr. Kittredge is currently practicing with Morgan Lewis & Bockius, 1701 Market Street, Philadelphia, PA 19103, (215) 963-5636). For PPSA: Joel I. Klein, H. Bartow Farr, III, Susan L. Carney, Rogovin, Stern & Huge, Washington DC. (Mr. Klein is now the Chancellor, New York City Department of Education, 52 Chambers Street, New York, NY 10007, (212) 374-0200, and Mr. Farr is now with Farr & Taranto, 1150 18th Street NW, Washington, D.C. 20036, (202) 775-0184). For Halderman, Pennsylvania Association for Retarded Citizens, et al.: David Ferleger, Esq. (Mr. Ferleger is now practicing at 413 Johnson Street, Jenkintown, PA 19046, (215) 887-0123.) For the United States: Solicitor General Drew Days. (General Days is now Professor at Yale Law School, Wall Street, New Haven, Connecticut, (203) 432-4948.)

9. White v. Johns-Manville Corp., 662 F.2d 234 (4th Cir. 1981) (Hall and Phillips, JJ.) (Widener, J., concurring), *overruled by Oman v. Johns-Manville Corp.*, 764 F.2d 224 (4th Cir. 1985) (en banc).

As an associate at Rogovin, Stern & Huge in 1980-1981, I worked with lead counsel Joel I. Klein and H. Bartow Farr on the brief for plaintiffs-appellants.

Mr. White and his co-plaintiffs were shipyard workers who developed asbestosis and other asbestos-related diseases after installing insulation made of asbestos on ships. They brought a products liability suit seeking recovery from the manufacturers of the asbestos insulation. They brought the suit in federal court on the basis of federal jurisdiction over admiralty cases. The district court ruled that plaintiffs' injuries did not bear a sufficient relationship to traditional maritime activity to support the exercise of admiralty jurisdiction. Exercising its diversity jurisdiction instead, it applied the Virginia statute of

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00609 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.539

limitations to bar one plaintiff's claim, and to limit (and ultimately overturn) jury awards of $435,000 to each of the remaining four plaintiffs.

We appealed on behalf of the workers, arguing both that the district court should have exercised admiralty jurisdiction, and that even if diversity jurisdiction applied instead, the Virginia statute of limitations should not bar or limit plaintiffs' claims. I worked primarily on the admiralty law argument.

The Court of Appeals reversed, holding that the district court should have exercised its admiralty jurisdiction because the plaintiffs' injuries occurred in a maritime locality and the installation of asbestos products into ships has a direct effect on marine commerce. 662 F.2d 234, 239 (4th Cir. 1981). It remanded with directions to apply the equitable doctrine of laches to the limitations period, giving due consideration to the "insidious nature of the disease." *Id.* at 240.

(Several years later, the issue of admiralty jurisdiction over this kind of case came before the Fourth Circuit again, and the court overruled its earlier decision, adopting a new four-part test under which federal courts may not exercise admiralty jurisdiction over damage claims by land-based ship repair or construction workers for employment-related, asbestos induced disease. *Oman v. Johns-Manville Corp.*, 764 F.2d 224 (4th Cir. 1985). I had no involvement with the later case.)

For John White et al.: Joel I. Klein, H. Bartow Farr, III, Susan L. Carney, Rogovin, Stern & Huge, Washington, DC. (Mr. Klein is now Chancellor, New York City Department of Education, 52 Chambers Street, New York, NY 10007, (212) 374-0200, and Mr. Farr is now practicing at Farr & Taranto, 1150 18th Street NW, Washington, D.C. 20036, (202) 775-0184.) Robert R. Hatten (Mr. Hatten is now with Patten, Wornom, Hatten, & Diamonstein, L.C., 12350 Jefferson Avenue, Suite 300, Newport News, VA 23602, (757) 223-4546), Richard S. Glasser (Mr. Glasser is currently with Glasser & Glasser P.L.C., 580 East Main Street, Suite 600, Norfolk, VA 23510, (757) 625-6787).

For H.K. Porter Co. and Southern Textile Corp.: Archibald Wallace III (Mr. Wallace is currently at WallacePledger, 7100 Forest Avenue, Suite 302, Richmond, VA 23226, (804) 282-8300) For Pittsburgh Corning Corp.: Allan S. Reynolds (Mr. Reynolds is currently at Crenshaw, Ware & Martin, 200 Bank of America Center, One Commercial Place, Norfolk, VA 23510, (757) 623-3000.)

10. Rennie v. Klein, 653 F.2d 836 (3d Cir. 1981) (en banc), *cert. granted and judgment vacated*, 458 U.S. 1119 (1982), *on remand*, 720 F.2d 266 (3d Cir. 1983) (en banc).

In about 1980-1981, as an associate at Rogovin, Stern & Huge, I helped prepare an amicus brief on behalf of the American Psychiatric Association (APA) in the first stage of this appeal. The issue presented to the Third Circuit was whether an individual who has been civilly committed in accordance with applicable New Jersey law retained a liberty interest in refusing medication and, if so, what process is due before a patient can be involuntarily treated.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00610 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.540

The APA took the position that the procedures followed to obtain an involuntary civil commitment sufficiently protected patients' liberty interests and that requiring an adversarial hearing at each phase of a treatment program would disrupt treatment and impose financial costs on the state and therapeutic costs on the individual and the treating psychiatrist.

The Third Circuit ruled en banc that committed patients retained the right to decline antipsychotic drugs as a part of the right to be "free from . . . unjustified intrusions on personal security" under the due process clause of the Fourteenth Amendment. 653 F.2d 836, 844 (3d Cir. 1981) (en banc). It further held that courts should police the boundary between justified and unjustified intrusions by applying a "least intrusive means" test to evaluate the proposed treatment. *Id.* at 847. Applying this test, the Court of Appeals then upheld as constitutional administrative procedures that New Jersey had already promulgated for making and reviewing a decision to administer drugs against a patient's will. *Id.* at 848-852.

For the State of New Jersey: John J. Degan, Attorney General of New Jersey, Assistant Attorney General Stephen Skillman (Mr. Skillman is now a Judge with the Appellate Court of New Jersey, R. J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625, (609) 984-2446.) For Rennie, et al.: Sheldon Gelman, Asst. Deputy Public Advocate (Mr. Gelman is now a Professor of Law at Cleveland-Marshall College of Law, 2121 Euclid Avenue, Cleveland, OH 44115, (216) 687-2000.) For amicus curiae American Psychiatric Association: Joel I. Klein, Ellen Semonoff, Susan L. Carney, Rogovin, Stern & Huge, Washington, D.C. (Mr. Klein is currently the Chancellor, New York City Department of Education, 52 Chambers Street, New York, NY 10007, (212) 374-0200, and Ms. Semonoff is currently Assistant City Manager, Department of Human Service Programs, 51 Inman Street, Cambridge, MA 02139, (617) 349-6200.)

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

The most significant legal activities I have pursued have been as Deputy General Counsel and, from July through December 2008, Acting General Counsel, at Yale University. Yale's actions are often important in the immediate community, nationally, and even internationally. In addition to resolving disputes, providing transactional assistance, and counseling Yale on understanding and determining how best to meet its legal obligations (private and public) in various areas of responsibility, I have contributed to Yale's efforts to create a culture in which its members understand their duty to know applicable law, and engage with efforts to apply the law to their situations and conform their behaviors to the law. Education about legal obligations, through teaching and creating suitable

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00611 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.541

vehicles for communicating about the law, has been among my most significant contributions. In close collaboration with the Vice President and General Counsel and with other colleagues, I have played a leading role developing the tools for education.

I coordinated the development of a 60-page "Guide to Reviewing Business Agreements and Contracts at Yale" and of a 50-page booklet called "Working Globally: Legal Considerations," which lays out and explains an array of United States and foreign legal requirements applicable to international operations; the drafting of the University's Standards of Business Conduct; the legal review and completion of its Information Technology Appropriate Use Policy; the creation of a two-hour course for Yale business managers designed to acquaint them with the basics of contracts and about the applications of the federal, state, and local laws and regulations at the University; the development, in collaboration with other colleagues and the Vice President and General Counsel, of the Office's website, which includes a series of essays by members of the Office on substantive obligations of interest to the Yale community; and development, under the leadership of former Provost and Professor Emeritus of Economics William Brainard, of the report providing the basis for a new, robust, and detailed conflict of interest policy for faculty with interests in startup companies.

As examples of the breadth of matters that I have handled at Yale, I chaired the committee charged with reporting on integrity as part of the University's reaccreditation self-study; I have provided counsel on several museum-related issues involving past gifts, the terms of trusts, and the complex interaction of laws governing paleontological digs in North Dakota; and I have worked with scholars to facilitate their research by helping them to understand and apply the law and to negotiate solutions to their legal issues, where possible.

I have not performed lobbying activities for any client.

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

    I have not taught formal courses.

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

    None.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00612 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.542

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

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court. If confirmed, I hope to continue my volunteer tutoring of elementary school students during court service.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I anticipate recusing myself from any case in which Yale University is a party for a period of years after beginning service as a judge.

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

       If confirmed, I would carefully study and apply the recusal statutes, Canon 3 of the Code of Conduct for United States Judges, and any other relevant rules and practices. In addition, I would seek and utilize the advice of colleagues to ensure that I avoid any conflict or appearance of conflict, as required by the rules and applicable canons.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00613 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.543

In addition to my work for nonprofit organizations and bar organizations, I undertook an extended pro bono representation in 1985 when I was assigned by Judge A. Franklin Burgess of the Superior Court of the District of Columbia to serve as *guardian ad litem* of K.G., a young mentally disabled woman living in the community who had been raped and become pregnant. The court requested advice about what would be in K.G.'s best interests. I do not recall how much time I devoted to this matter, but I believe that the overall representation went on for several weeks and that I continued to visit with K.G. until after the birth of the child. (Childbirth went smoothly and the baby was given up for adoption.) I was commended by the Court for my service on this matter.

More broadly, I have taken seriously my obligations to contribute to the community. For example, I participate in a tutoring program, New Haven Reads, in which I work with a 10-year-old girl on her reading an hour each week. I have also used my legal skills and training to serve various community organizations through board membership in those organizations.

26. **Selection Process**:

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

There is no selection commission in Connecticut to recommend individuals for appointment to the United States Court of Appeals for the Second Circuit.

I initially was contacted by the White House Counsel's Office in or about March 2009, and asked whether I would be interested in being considered as a candidate for a seat on the Court of Appeals. I was also asked to suggest other possible candidates. In April, I submitted materials regarding my experience to the White House Counsel's Office. In the fall, I was advised that the White House and United States Senator Christopher Dodd had agreed that I would meet with him, and on October 16, I met with Senator Dodd at his offices in Hartford, Connecticut. On October 22, I met with United States Senator Joseph Lieberman's Chief of Staff in Washington, D.C. I also met with attorneys in the White House Counsel's Office on October 22. On November 12, I was advised by the White House Counsel's Office that my name was being forwarded to the Department of Justice for review.

Since November 16, 2009, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00614 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.544

Counsel's Office and the Department of Justice on January 22, 2010, in Washington, D.C. The President submitted my nomination to the Senate on May 20, 2010.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00615 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.545

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Carney, Susan L.	Second Circuit	05/19/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
Circuit Judge–nominee	☑ Nomination, Date 5/20/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 4/30/2010
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.**	
Yale University, Office of General Counsel Two Whitney Avenue, 6th Floor New Haven, CT 06510	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. Deputy General Counsel	Yale University
2. Director	National Association of College and University Attorneys
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Carney, Susan L.	Date of Report 05/19/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-34 of filing instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2009	Yale University, Compensation (W-2, Box 1)	$191,490.46
2. 2010	Yale University, Compensation (federal/state taxable pay)	$63,338.76
3.		
4.		

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

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

DATE	SOURCE AND TYPE
1. 2009	SeaChange Capital Partners, compensation
2. 2009	Sagalyn Literary Agency, royalties
3. 2010	SeaChange Capital Partners, compensation
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Carney, Susan L.	Date of Report 05/19/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Carney, Susan L.	05/19/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. Wachovia/Wells Fargo accounts	A	Interest	K	T	Exempt				
2. JPMorganChase accounts	A	Interest	K	T					
3. Fidelity Cash Reserves	A	Dividend	K	T					
4. U.S. Savings Bonds	A	Interest	K	T					
5. Fidelity Cash Reserves (SEP-IRA)	A	Dividend	J	T					
6. Fidelity Cash Reserves (Rollover IRA)	A	Dividend	M	T					
7. Fidelity Cash Reserves (Traditional IRA)	B	Dividend	M	T					
8. Vanguard Prime Money Market Fund (403b)	B	Dividend	N	T					
9. Vanguard Prime Money Market Fund (403b)	B	Dividend	N	T					
10. Vanguard Prime Money Market Fund (403b)	A	Dividend	M	T					
11. Vanguard Prime Money Market Fund (457b)	A	Dividend	K	T					
12. Principal Money Market R3 Fund (457b)	A	Dividend	K	T					
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Carney, Susan L.	Date of Report 05/19/2010

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

My husband and I have one JPMorganChase Plus Savings Account whose value code is K and value method is T, which is a fund held for a relative. It was formerly invested in JP Morgan Liquid Assets Money Market, with dividends in the reporting period of type A.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Carney, Susan L.	Date of Report 05/19/2010

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 Susan L Carney

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		78	486	Notes payable to banks-secured			
U.S. Government securities—Series EE bonds		27	981	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—personal residence		307	686
Real estate owned—see schedule		960	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	240	Constructive trust for relative		34	879
Cash value-life insurance							
Other assets itemize:							
Money Market Funds		20	731				
Retirement Accounts—see schedule	1	080	482				
Deferred Compensation—see schedule		74	895	Total liabilities		342	565
				Net Worth	1	930	250
Total Assets	2	272	815	Total liabilities and net worth	2	272	815
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		4	040	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

66720.551

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 640,000
Condominium	320,000
Total Real Estate Owned	960,000
Retirement Accounts	
Fidelity Cash Reserves	$ 116,124
Vanguard Prime Money Market Fund	397,731
Fidelity Cash Reserves	972
Fidelity Cash Reserves	184,056
Vanguard Prime Money Market Fund	275,893
Vanguard Prime Money Market	105,706
Total Retirement Accounts	$ 1,080,482
Deferred Compensation	
Vanguard Prime Money Market Fund	$ 36,238
Principal Money Market R3 Fund	38,657
Total Deferred Compensation	$ 74,895

AFFIDAVIT

I, **SUSAN LAURA CARNEY**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 18, 2010
(DATE)

Susan L Carney
(NAME)

(NOTARY)
Carmen Morano
My Commission Expires May 31, 2012

Susan L. Carney
Two Whitney Avenue, Sixth Floor
New Haven, Connecticut 06510

August 2, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed a copy of a letter dated July 8, 2010 to the Committee on Financial Disclosure of the Judicial Conference of the United States amending my Nomination Financial Disclosure Report.

I submitted a copy of my original report (dated May 19, 2010) to the Committee on the Judiciary in response to Question 22 of the Committee Questionnaire. Therefore, I ask that you accept this letter as an amendment to my prior submission.

Thank you for your consideration.

Sincerely,

Susan L. Carney

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Susan L. Carney
Two Whitney Avenue, Sixth Floor
New Haven, Connecticut 06510

July 8, 2010

VIA FEDERAL EXPRESS

The Honorable Bobby R. Baldock
Chair
Committee on Financial Disclosure
Judicial Conference of the United States
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Nomination Financial Disclosure Filing

Dear Judge Baldock:

Thank you for your letter of June 8, 2010, regarding the Nomination Financial Disclosure Filing I made on May 19, 2010, in connection with my nomination to be a United States Circuit Judge for the Second Circuit. Please accept this letter as a supplement to my report, providing the information you requested.

In Part III.A: I had reportable compensation during 2008. The source was Yale University and the type was "Compensation (W-2, Box 1)." The income amount was $240,740.23.

In Part VIII: The note provided in Part VIII was excess information because the asset is already included in the entry on line 2 of Part VII. Please delete the note.

Thank you for your attention to this supplement. Please let me know if there are any additional questions or concerns.

Sincerely,

Susan L Carney

Susan L. Carney

66720.555

Susan L. Carney
Two Whitney Avenue, Sixth Floor
New Haven, Connecticut 06510

September 10, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write to provide the Committee with an update to the questionnaire I submitted in connection with my nomination on May 20, 2010, to be United States Circuit Judge for the Second Circuit.

As of September 1, 2010, my husband became a member of the editorial board of the New York Times. Accordingly, I wish to update my answer to Question 24(a) to add that, if confirmed and appointed, I anticipate a conflict at the time I begin service as a judge in any case in which the New York Times Company is a party. I would address this conflict by recusing myself from any such case.

I appreciate the Committee's consideration of my nomination.

Sincerely,

Susan L. Carney

Susan L. Carney

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

66720.556

STATEMENT OF AMY TOTENBERG, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Ms. TOTENBERG. First of all, thank you very much, Senator and members of the Committee, in absentia, for your review and consideration of the application. I'm just deeply grateful, deeply grateful to the President, and, of course, to my Georgia Senators who appeared today for their very kind and generous introduction. It is a real privilege to be here today.

I want to start off by, of course, introducing my family who is here, both in body and in spirit, and would like to start off by just speaking about my father, Roman Totenberg, who will be 100 on January 1 and who is not with us today, but who is actually living and working in Boston and teaching at Boston University and remains an extraordinary man.

He first came to this country in 1935 to give his first concert here. He had been a concert violinist in Europe and he gave his debut concert in Washington, DC and fell in love with this country totally, and then with the shadow of Nazi power coming over Europe in the following years, he moved to the United States and married my mother.

He embraced the freedom and democracy in our country, which has just really been sort of the hallmark of our experience of citizenship. And he has been a lifelong model of human independence, professional dedication, and personal wisdom, and I am deeply grateful for the role model he has provided, as well as his affection. And I know he will be watching the Webcast when there is somebody at home to manage the technology.

And my mother, who is no longer alive, would love to be here and I honor her in principal, of course, but I've got a great gang who are here. And first and foremost, my husband, Ralph Green, a man for all seasons and my great support, married for 30 years; and, my three daughters, Naomi Green, Sonya Green, and Clara Green. And I would ask them all to stand up.

And my husband is hiding out, but that's all right. He's got the girls for protection. I also have a great daughter, Emily Green, in California and she couldn't join us, because she has a new job there.

And I've got wonderful other supports here, as well. I've been incredibly fortunate in my life to have worked with Judge Marvin Garbis and Judge Paul Friedman from Maryland and from DC, and they are both here today, and they have given me an exceptional opportunity in life to work with both of their courts in very important cases that benefit the children of the city of Baltimore and Washington, DC and have been very difficult cases and complex ones. But it's been an extraordinary opportunity to work with them.

And flowing out of that, I have a great crowd of people from Baltimore and Washington, DC. There are representatives, both council and representatives of the parties in the Baltimore case, from the State of Maryland, Baltimore City Schools, and the Maryland Disability Law Center are all here, and I would ask them to stand up, all that entire group of people.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00627 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

And then we also have people from the Washington city schools and I am very appreciative of them, as well. And I have my very close former colleague from Baltimore, Erin Leff, and my very good friend from Atlanta, Midge Sweet, who has traveled up here today, and, of course, a host of people in Georgia who I have worked with.

Thank you so very much, and thank you to all my friends and family who are here.

Senator DURBIN. Thank you.

Judge Boasberg.

[The biographical information follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Amy Mil Totenberg

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

   United States District Judge for the Northern District of Georgia

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

   Law Office of Amy Totenberg
   P.O. Box 17521
   Atlanta, Georgia 30316

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

   1950; New York, New York

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

   1974 – 1977, Harvard Law School; J.D., 1977
   1969 – 1974, Harvard/Radcliffe College; A.B. (magna cum laude), 1974

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

   1998 – Present
   Law Office of Amy Totenberg
   P.O. Box 17521
   Atlanta, Georgia 30316
   Attorney / Arbitrator / Mediator

66720.557

2005 – Present
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, D.C. 20001
Court Monitor (2006 – Present)
Court Appointed Mediator (2005 – 2006)

2000 – Present
United States District Court for the District of Maryland
101 West Lombard Street, Chamber 2D
Baltimore, Maryland 21202
Special Master

2004 – 2007
Emory University School of Law
1301 Clifton Road
Atlanta, Georgia 30322
Adjunct Professor

1994 – 1998
Board of Education of the City of Atlanta
130 Trinity Avenue, SW
Atlanta, Georgia 30303
General Counsel

1982 – 1994
Law Office of Amy Totenberg
The Hurt Building
50 Hurt Plaza
Atlanta, Georgia 30303
Attorney

1988 – 1993
City of Atlanta Municipal Court
150 Garnett Street, SW
Atlanta, Georgia 30303
Part time *pro hac vice* Municipal Court Judge

1977 – 1982
The Law Project
57 Forsyth Street
Atlanta, Georgia 30303
Partner

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00630 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.558

1975 – 1977
Education/Instrucción (since dissolved)
Roxbury, Massachusetts
Legal Assistant

1975
Law Firm of James M. Haviland (since dissolved)
Charleston, West Virginia 25301
Summer Legal Intern

Other Affiliations:

1992 – 2008
GreenLaw (formerly the Georgia Center for Law in the Public Interest)
State Bar of Georgia Building
104 Marietta Street, Suite 430
Atlanta, Georgia 30303
Board Member (1992 – 2008) (Unpaid)
President (1993 – 1994) (Unpaid)

2002 – 2003
Georgia State Personnel Board
205 Jesse Hill Jr. Drive, SE
Twin Towers West
Atlanta, Georgia 30334
Board Member (Unpaid)

1999 – 2000
Governor's Education Reform Commission
State Capitol
Atlanta, Georgia 30334
Commission Member (Unpaid)

1999 – 2000
Hands On Atlanta
600 Means St. NW
Atlanta, Georgia 30318
Board Member (Unpaid)

1996 – 1999 (Approximate)
The National Faculty (since dissolved)
100 Peachtree Street
Atlanta, Georgia 30303
Board Member (Unpaid)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00631 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.559

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

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

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

   Federal Bar Association, Maryland Chapter, Award for Public Service (2007)
   Martindale-Hubbell, AV Rated (Highest Ranking for Legal Ability & Ethical Standards)
   Joseph Henry Lumpkin American Inn of Court, Master (1994 – Present)
   State Personnel Board, Special Leadership Recognition Resolution (2003)
   Open Society Institute, Scholar/Fellowship Award (1998 – 1999)
   Georgia Minority Counsel Program, Corporate Service Award (1996)
   Alliance of SE Atlantans for Neighborhood Development, Public Service Award (1985)
   Committee for State Employee Rights, Outstanding Service Award (1984)
   Kendall Foundation of Boston, Special Grant for Public Service Legal Work (1976)

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

   State Bar of Georgia:
   - General Counsel Overview Committee (1998 – 2000) (Approximate)
   - Individual Rights Section, Secretary (1983 – 1984)
   - Individual Rights Section, Vice Chair (1984 – 1985)

   American Arbitration Association
   American Bar Association
   American Constitution Society
   Atlanta Bar Association
   The Georgia Academy of Mediators & Arbitrators
   Georgia Association of Women Lawyers
   JAMS (formerly Justice, Arbitration, Mediation Services)
   Joseph Henry Lumpkin American Inn of Court, Master (1994 – present)
   Lawyers Committee for Civil Rights under Law
   Merit Selection Panel for Re-Appointment of Magistrate(s) of the United States District Court, Northern District of Georgia, Co-chair (1992)
   National Employment Lawyers Association
   National Lawyers Guild
   National School Boards Association Attorneys Network

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00632 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.560

10. **Bar and Court Admission**:

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

Georgia, 1977. There have been no lapses in my membership.

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

Supreme Court of the United States, 1988
United States Court of Appeals for the Fifth Circuit, 1981
United States Court of Appeals for the Eleventh Circuit, 1981
United States District Court for the Middle District of Georgia, 1978
United States District Court for the Northern District of Georgia, 1978
Supreme Court of the State of Georgia, 1977
Georgia Court of Appeals, 1977
Fulton County, Georgia Superior and State Courts, 1977

I recently learned that my admission to the Court of Appeals for the Fifth Circuit has lapsed. I have not practiced before the Fifth Circuit in many years, and I was unaware of the lapse until inquiring about my admission status to answer this question. I am aware of no other lapse in membership.

11. **Memberships**:

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

East Atlanta Community Assn., 1983 – 1986 (Approximate); 2007 – present
Harvard/Radcliffe Alumni Assn., 1980 – present (Approximate and Intermittent)
Lake Yonah Association, 1995 – present (Approximate)
YMCA of Metropolitan Atlanta, 2000 – present
American Civil Liberties Union, 1977 – 2008 (Approximate)
GreenLaw (formerly Georgia Center for Law in the Public Interest):
Board Member, 1992 – 2008
President, 1993 – 1994
Advisory Board, 2008 – 2009
Atlanta Public Schools PTA, 1980 – 2005
Paideia School Diversity Committee, Chair, 1999 – 2001 (Approximate)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00633 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.561

Hands On Atlanta, Board Member, 1999 – 2000
The National Faculty, Board Member, 1996 – 1999 (Approximate)

Additionally, I have made financial contributions to a wide range of organizations. The following organizations may consider me a member solely by virtue of my financial contribution:

Atlanta Zoo, 1985 – present (Approximate)
High Museum of Art, 1983 – present (Approximate)
Museum of Contemporary Art of Georgia, 2003 – present
Natural Resources Defense Council, 1994 – 2008 (Approximate and Intermittent)
Oxfam, 2006 – present (Approximate)
WABE / WPBS / NPR, 1980 – present (Approximate and Intermittent)
Amnesty International, 2000 – 2008 (Approximate and Intermittent)
Georgia Women's Action for New Directions, 1995 – 2008 (Approximate)
Mexican American Legal Defense and Educational Fund, 2005 – 2006 (Approximate)
National Association for the Advancement of Colored People, 2004 – 2006 (Approximate)
Environmental Defense Fund (Unknown years)
National Organization for Women (Unknown years)
National Partnership for Women and Families (Unknown years)
Sierra Club (Unknown years)

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

None of the organizations of which I have been a member presently discriminates or discriminated while I was a member.

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

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

"Use of Special Masters in Complex Litigation," JAMS Atlanta Newsletter, Spring 2002.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00634 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.562

"Restructuring School Management," *Fellow Observer*, Vol. iii, No. 1, Spring 2000.

"Drug Testing of Public Employees," *The Verdict,* Vol. 16, No. 2, March/April, 1991. [Elizabeth J. Appley, co-author.]

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

I served on the Georgia State Bar's General Counsel Overview Committee in the period 1998 to 2000 (approximate). The committee made recommendations to the State Bar's Executive Committee, President, and/or General Counsel. The recommendations were reached through a collaborative committee process. I do not have access to the reports containing these recommendations.

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

I presented the recommendations of the Ad Hoc Committee to the Board of Education for the State of Georgia regarding revisions of State Board rules and policies required to implement current requirements of the Individuals with Disabilities Education Act.

I made an oral presentation to a committee of the Governor's Education Reform Commission in Georgia in 1999 regarding education issues impacting students with disabilities, including: federal legal requirements for participation of students with disabilities in school administered standardized testing, disparities in dropout data, school completion data, and legal mandates for placement in the least restrictive environment. I did not provide a written submission and do not have a copy of any transcripts of the committee proceedings.

As a Member of the State Personnel Board (2002 – 2003), I made occasional comments regarding state personnel policies under review. Similarly, as a member of the Governor's Education Reform Commission (1998 – 99), I made public comments at times during the Commission's meetings as to education policy and reform changes under consideration. Finally, as General Counsel to the Atlanta Board of Education, I responded to questions of Board members at various times regarding general legal issues in public meetings of the Board. I do not have copies of the transcripts of these meetings or proceedings.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00635 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.563

I testified before an ad hoc committee of Georgia legislators regarding the functioning of the Georgia Office of Fair Employment Practices sometime in the mid 1980s. I do not have any records or transcripts relating to this testimony.

I gave testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing and Urban Affairs in 1976 on civil rights issues raised by the administration of the Community Development Block Grant Program. A copy of my report, "Broken Promises: An Analysis of Discrimination in the Implementation and Distribution of Federal Community Development Block Grants," was provided to the Committee. I do not have a copy of the transcript of those hearings or the final report filed with the Committee.

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

I have given presentations and participated in panels in a variety of continuing legal education programs. I also have given speeches and presentations in universities, colleges, law schools, K-12 public schools, and community groups. I have a record of participating as a presenter or panel member in the following seminars, conferences, classes, or programs:

Twombly & Motions to Dismiss / Inn of Court (October 20, 2009, Atlanta, GA) (No text or notes)

Compliance Issues Raised by the United States' Ratification and Implementation of the Education Articles on the Rights of the Child / The Convention on the Right of the Child, Georgetown University Law Center. (June 1, 2009, Washington, D.C.)

Advocacy in Arbitration, Lumpkin Inn of Court. (January 2009, Athens, GA) (No text or notes)

Education Adequacy and Equity Litigation, Emory University. (March 2007, Atlanta, GA) (No text or notes)

Employment Arbitration under Pre-Dispute Mandatory Clauses: Practical Issues and Challenges, ADR On My Mind in Georgia / ABA Annual Dispute Resolution. (April 2006, Atlanta, GA)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00636 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.564

Mandatory Binding Arbitration of Employment Disputes, ADR Institute and 2005 Neutrals' Conference ICLE. (October 2005, Atlanta, GA)

Education Adequacy Litigation in Georgia, Southern Education Fund. (March 2005, Atlanta, GA) (No text or notes)

Case Management of Complex Biotechnology Conflict, EINSHAC Judicial Institute on Bioscience and Biotechnology. (March 2004, Concepción, Chile)

Evaluative Processes: Whether, When and How, ADR Neutrals Conference ICLE. (November 2003, Lake Lanier Islands, GA) (No text or notes)

Careers in Public Interest Law, Emory University. (October 2003, Atlanta, GA) (No text or notes)

Complex Remedies in Institutional Reform Litigation, University of Georgia School of Law. (November 2000, Athens, GA) (No text or notes)

Education Reform and the Georgia Education Reform Act of 2000, Hands on Atlanta Citizen Academy. (May 2000 and October 2000, Atlanta, GA) (No text or notes)

The Bar Disciplinary Process, Lumpkin Inn of Court. (April 2000, Atlanta, GA) (No text or notes)

Legal and Labor Relations Issues Impacting School Reform, Brown University. (October 1999, Providence, Rhode Island) (No text or notes)

Attorney-Client Privilege/The Lawyer as Witness, Lumpkin Inn of Court. (February 1999, Athens, GA) (No text or notes)

Suing the Government in Georgia, WPBS TV: The Layman's Lawyer. (September 1998, Atlanta, GA) (No text or notes)

School and College Law, School & College Law Section of the State Bar of Georgia. (September 1995, Atlanta, GA) (No text or notes)

Intake and Evaluation of Sexual Harassment Cases, Atlanta Bar Association. (February 1994, Atlanta, GA) (No text or notes)

The First Amendment Rights of Public Employees, Employment Discrimination ICLE Seminar. (December 1993, Atlanta, GA) (No text or notes)

Special Litigation Problems Under the Disabilities Act and the Americans with Disabilities Act, ICLE. (March 1993, Atlanta, GA) (No text or notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00637 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.565

The New Civil Rights Act of 1991 and Litigation of Employment Discrimination Cases under Title VII, State Bar of Georgia and the Georgia Commission for Equal Opportunity. (June 1992, Atlanta, GA) (No text or notes)

Employment Law in Georgia, WPBS TV: The Layman's Lawyer. (July 1992, Atlanta, GA) (No text or notes)

The Impact of the Supreme Court's Recent Decisions: A Panel Discussion, Peach State Public Radio. (June 1992, Atlanta, GA) (No text or notes)

Development Issues Affecting Metropolitan Atlanta, American Bar Association Local Government Section Annual Convention. (1991, Atlanta, GA) (No text or notes)

The Impact of Recent Supreme Court Cases on Employment Law, Georgia State University School of Law. (April 1991, Atlanta, GA) (No text or notes)

Viewpoints on Employment Issues, Council on Education for Management. (February 1991, Atlanta, GA) (No text or notes)

Georgia and Federal Employment Law, Georgia Trial Lawyers Association. (1991, Atlanta, GA) (No text or notes)

State and Federal Constitutional Issues Posed by Affirmative Action Programs, Emory University School of Law. (April 1990, Atlanta, GA) (No text or notes)

Collateral Estoppel and Res Judicata Issues in Constitutional and Civil Rights Litigation, Network Attorney Seminar of Georgia Association of Educators. (1990, Atlanta, GA) (No text or notes)

New Challenges for Employment Attorneys: Viewpoints on the Supreme Court's Recent Decisions, Atlanta Bar Association. (October 1990, Atlanta, GA) (No text or notes)

A Summary of Case Law Under the Georgia Open Records Act, State Bar of Georgia Individual Rights Section ICLE. (September 1990, Atlanta, GA) (No text or notes)

White Collar Terminations, Atlanta Bar Association. (June 1989, Atlanta, GA) (No text or notes)

Discovery, Depositions, Privileges, and Objections, National Employment Lawyers Association. (November 1989, Atlanta, GA) (No text or notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00638 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.566

Section 42 U.S.C. § 1983 and the Constitutional Rights of Public Employees, State Bar of Georgia Individual Rights Section ICLE. (November 1988, Atlanta, GA) (No text or notes)

The Trial of a Sex Discrimination/Retaliation Case: A Mock Trial, State Bar of Georgia Individual Rights Section ICLE. (October 1988, Atlanta, GA) (No text or notes)

Women's Equality and Employment Law, Business and Professional Women's Association Annual National Convention. (May 1988, cannot recall location in Georgia) (No text or notes)

Employment Discrimination: Choosing Your Client, State Bar of Georgia Individual Rights Section ICLE. (October 1987, Atlanta, GA) (No text or notes)

State and Federal Constitutional Issues Affecting Teachers, Georgia Association of Educators Network Attorney Seminar. (November 1986, cannot recall location in Georgia) (No text or notes)

Public Employees' Rights to Due Process: A Review of Recent Constitutional Developments, State Bar of Georgia Individual Rights Section ICLE. (October 1986, Atlanta, GA) (No text or notes)

Recent Developments in Supreme Court Jurisprudence in Employment and Related Areas, Constitutional Law Conference Sponsored by American Jewish Congress. (March 1985, Atlanta, GA) (No text or notes)

Georgia and Federal Employment Law, Georgia Trial Lawyers Association. (1985, Atlanta, GA) (No text or notes)

Legal Practice in Small Law Firms, Harvard Law School. (November 1984, Cambridge, MA) (No text or notes)

Constitutional Developments, State Bar of Georgia Individual Rights Section ICLE. (October 1984, Atlanta, GA) (No text or notes)

Free Speech, Association, and Due Process Rights of Public Employees, State Bar of Georgia Individual Rights Section ICLE. (October 1982, Atlanta, GA) (No text or notes)

Equal Pay Issues for Women under Federal and State Law, University of Georgia. (April 1981, Athens, GA) (No text or notes)

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00639 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.567

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As General Counsel for the Atlanta Public Schools, as a litigator of a range of cases of public interest, and as a member of the Governor's Education Reform Commission, I have made comments that were quoted by a variety of media outlets regarding legal case developments, court rulings, and educational policies under review. I have identified the following articles and interviews:

Daily Report, "State Preps for Dust Up Over Rural School Districts" (1/19/07)
Daily Report, "Rural Schools Look to Court for Funding Solution" (12/1/05)
Atlanta Journal Constitution ("*AJC*" hereinafter), "Rural Schools Sue for Bigger Share" (6/24/05)
Augusta Chronicle, "School-Funding Suit is on Hold" (6/24/05)
Associated Press, "Rural Schools Lawsuit Gets First Hearing in Court" (6/23/05)
Washington Post, "Judge Goes off the Clock to Settle Case" (5/8/00)
Baltimore Sun, "Deal Nears for Special Education" (4/29/00)
AJC, "Critics Say Tests Aren't the Answer" (4/16/00)
AJC, "Education Reform Panel to Look at Accountability" (6/7/99)
WPBS TV, The Layman's Lawyer program (9/98)
AJC, "Schools' Lawyer Leaving" (4/30/98)
Daily Report, "Totenberg Leaves Board Post for Fellowship" (4/23/98)
AJC, "City Schools Resolve Suit on Set-Asides" (4/21/98)
AJC, "School Lawsuit May Be Settled" (4/20/98)
AJC, "Contractor, Adviser Have Ties" (4/4/98)
AJC, "Judge Attacks City Schools' Affirmative Action Plan" (1/17/98)
AJC, "School Employees Sue Over Changes in Job Status" (11/27/97)
AJC, "High Court Upholds Atlanta Property Tax" (4/17/97)
AJC, "City Schools Must Defend Set-Asides" (4/2/97)
AJC, "Pennies For Schools, Billions in Taxes" (3/14/97)
AJC, "Phone Tower Lease Gets Static" (3/6/97)
AJC, "Just Politics? Schrenko Support For Local Control Selective" (1/27/97)
Daily Report Card, "Legal Marathon: Battle Over Millage Cap Ends in Atlanta" (7/31/96)
Dow Jones Newswires, "Court Backs Atlanta Schools' Millage Hike" (7/22/96)
AJC, "Ruling a Boost For City Schools" (7/20/96)
AJC, "Ruling Due on School Funds Challenge" (7/16/96)
AJC, "Schools Get a Break, At Least Temporarily, on Sales Tax Funding" (5/17/96)
AJC, "Tax Arrangement: Atlanta's Contributions to Schools Ruled Illegal" (9/1/95)
The Bond Buyer, "Atlanta's Sales Tax Payout to School Board is Illegal, Says County Judge" (9/1/95)
New York Times, "Despite Ruling, Wide Drug Testing of Students is Not Foreseen" (6/28/95)
AJC, "Sales Tax For Schools Doesn't Cost City" (5/14/95)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00640 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.568

AJC, "Metro In Brief: City Sues School Board" (5/11/95)
AJC, "Court to Rule on Revenue Sharing" (4/26/95)
AJC, "Minority Business Programs" (4/4/95)
AJC, "Catch-up Program Designed to Create 'Level' Playing Field" (3/30/95)
AJC, "School System Sued" (3/30/95)
The Wall Street Journal, "Atlanta Firm Plans Suit to Contest Program for Minority Contractors" (3/29/95)
AJC, "Peach Buzz Talk of Our Town" (12/18/94)
Daily Report Card, "Legal Eagles: Education in the Courts" (10/17/94)
AJC, "School Taxes in Atlanta Too High, Suit Claims" (9/22/94)
AJC, "Sexual Harassment: What's Behind the Ruling" (11/10/93)
AJC, "Demoted PSC Employee Awarded Back Pay, Pension" (9/2/93)
Daily Report, "PSC Made to Pay for Bad Faith" (9/93)
WPBS TV, The Layman's Lawyer program (7/92)
AJC, "Amy Totenberg," (6/17/92)
Peach State Public Radio: The Impact of the Supreme Court's Recent Decisions: A Panel Discussion (6/92)
AJC, "Women Who Should Know, Examine Steinem Mystique" (1/17/92)
AJC, "Who's Minding Your Kids; A Parent's Guide to Childcare" (8/11/91)
The New York Times, "Workers Find it Tough Going Filing Lawsuits Over Job Bias" (7/24/91)
AJC, "Clarence Thomas: Nominee under Scrutiny," (7/3/91)
AJC, "Drug Tests for New State Employees Won't Be Defended in Court" (11/20/90)
Daily Report, "Challenge to Drug Statute Halts Testing," (7/25/90)
AJC, "State Told to Halt Drug Tests on Job Seekers," (7/21/90)
AJC, "Teachers Group to Challenge Drug-Test Law" (7/4/90)
AJC, "U.S. Judge Won't Halt Transfer" (7/22/89)
AJC, "8 Ex-Workers at DeKalb Farmers Market Settle Federal Suit" (6/8/89)
Daily Report, "Done Deal? Farmers Market Settlement Near" (6/6/89)
The Wall Street Journal, "New Age Training Suit Against Market Settled Out of Court" (5/31/89)
AJC, "Skin Tone, As Well As Race, May Spur Bias" (5/13/89)
The Los Angeles Times, "Challenged By Workers, New Age Pep Talks, a Backlash" (3/25/89)
The Wall Street Journal, "Atlanta Officials Vow to Replace City's Court-Nullified Affirmative Action Plan" (3/6/89)
AJC, "8 Former Workers Sue DeKalb Farmers Market" (12/8/88)
AJC, "Piggyback Critics Claims They're Being Taken for a Ride" (9/22/88)
AJC, "Ex-Workers Say Farmers Mart Guilty of Bias" (12/19/87)
AJC, "Desegregation Ruling Threatens Local Schools in 3 States, DeKalb Appeal Says" (11/1/89)
Fulton County Daily Report, "Sisters-in-Law" (3/23/88)
AJC, "Meyers: Engineering the Piggyback Project" (12/16/85)
AJC, "Financial Reward Small for 66 Bias Victors" (11/30/85)
AJC, "Ordeal for Sex Bias Victim Over" (9/13/85)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00641 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.569

AJC, "Piggyback Supporters and Opponents Seem Optimistic" (7/25/85)
AJC, "Seaboard May Be In Engineer's Seat Now on Piggyback Terminal" (6/23/85)
AJC, "Debate on Piggyback Continues in Wake of High Court's Decision" (6/20/85)
AJC, "Piggyback Plan Gets New Life From Top Court" (6/19/85)
AJC, "Judge Voids Piggyback Permit" (3/13/85)
AJC, "Piggyback Foes Cheer Court Ruling" (3/13/85)
AJC, "Seaboard Vows to Fight Piggyback Decision" (3/13/85)
AJC, "Piggyback Plan Still the Center of Debate" (1/17/85)
AJC, "Back Wages to Go to Black Workers at Georgia Mental Facility" (12/1/82)
Stuart E. Weisberg, *Barney Frank: The Story of America's Only Left-Handed, Gay, Jewish Congressman* (2009), 119-20

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

Municipal Court Judge, *pro hac vice*, for the City of Atlanta, 1986 – 1993:
I was appointed by the Mayor of the City of Atlanta. The Municipal Court has jurisdiction to try and punish violations of the city ordinances, city and state traffic laws, and other matters as provided by general law, including a range of criminal misdemeanor offenses. The court handles a high daily volume of cases, primarily involving vehicular offenses, sentencing, fines, and the approval of plea agreements. Daily sessions involved brief hearings usually spanning from two to thirty minutes in duration. Depending on the year, I served anywhere from approximately twice a month to five times during the course of a year.

Special Master, United States District Court for Maryland, 2000 – present:
I was appointed through an Order of Reference, pursuant to Rule 53 of the Federal Rules of Civil Procedure, by Judge Marvin J. Garbis. The Order of Reference authorizes me to monitor, conduct evidentiary investigations and hearings, and issue reports, including findings and remedial recommendations, to the federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure. I am also authorized to mediate and resolve disputes between the parties. Consistent with Rule 53 and the Order of Reference, the District Court reviews my recommended findings of fact and recommendations and adopts such, based upon that review and the nature of objections, if any, from the parties.

Monitor (previously mediator), United States District Court for the District of Columbia, 2006 – present:
I was appointed by Judge Paul L. Friedman through an Order of Reference entered pursuant to the provisions of the Consent Decree entered in the case on August 24, 2006. The Order of Reference authorizes me to conduct evidentiary investigations and issue reports regarding the status of defendants' compliance with the Consent Decree and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00642 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.570

applicable law as well as make remedial recommendations. It also authorizes me to mediate and facilitate resolution of disputes between the parties.

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

As a municipal court judge *pro hac vice*, I heard approximately 1,500 cases.

i. Of these, approximately what percent were:

jury trials:	
bench trials:	100%
civil proceedings:	
criminal proceedings:	100%

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

None.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Given the nature of municipal court offenses, my rulings on municipal court cases were routine and short.

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

I did not write opinions.

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

None.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00643 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.571

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

I did not write opinions.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

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

I have not sat by designation.

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

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

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

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

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

Due to the specific nature of municipal court proceedings and my limited service, I was never called upon by motion or case circumstances to recuse myself.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00644 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.572

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

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

General Counsel, Board of Education for the City of Atlanta and Atlanta Public Schools (1994 – 1998) (appointed by the Atlanta Board of Education).

Member, Governor's Education Reform Commission (1999 – 2000) (appointed by Governor Roy Barnes). The Commission was charged with the responsibility for making comprehensive recommendations for the revision of Georgia's education laws and programs.

Chair, Ad Hoc Committee to the Georgia Board of Education (2000 – 2002) (appointed by the Georgia State Board of Education).

Board Member, State Personnel Board (2002 – 2003) (appointed by Governor Roy Barnes). The Board is charged under law with responsibility for issuance of regulations regarding state employment and review of administrative appeals of state employee cases.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office. I served a partial term on the State Personnel Board. The newly elected governor, who took office six months after my appointment by Governor Barnes, did not submit my name to the state legislature for ratification. My service ended in April 2003.

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

Between 1988 and 2008, I did occasional volunteer work for Democratic presidential campaigns, such as driving voters to the polls. In the 2008 presidential campaign, I performed voter protection work, assisting in the effort to ensure that citizens were able to register, confirm their voting status and voting precinct, and exercise their right to cast a ballot in conformity with the law. I also served as a volunteer state-wide poll watcher in the November 2008 elections.

I recall being listed on event host committees for State Senator Nan Orrock and for former Atlanta Mayor Shirley Franklin, although I do not recall the date or dates. I may have been listed on other event host committees, but I do not recall specifics of them.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00645 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.573

I worked on a volunteer basis as a scheduler for the congressional campaign of Robert Drinan in 1970 (May – November).

I have been a member of the Democratic Party intermittently between 1988 and 2008. I have never held a paid position with a political campaign or political entity.

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

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

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

I did not serve as a clerk to a judge.

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

While I have maintained a solo practice through a substantial portion of my career, I have consistently affiliated with other attorneys in handling litigation due to the broad scope of many of the cases handled. In the last decade, I have maintained my legal practice while spending the majority of my time as a special master, monitor, and arbitrator/mediator. My office has been located at various addresses: The Healy Building 57 Forsyth St., Atlanta, GA 30303 (1982 – 1984); The Grant Building 44 Broad St., Atlanta, GA 30303 (1984 – 1987); The Hurt Building 50 Hurt Plaza, Atlanta, GA 30303 (1987 – 1994); P.O. Box 17521, Atlanta, GA 30316 (1998 – present).

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

1977 – 1982
The Law Project
57 Forsyth St.
Atlanta, Georgia 30303
Partner

1994 – 1998
Board of Education of the City of Atlanta
130 Trinity Ave SW (current address)
Atlanta, GA 30303
General Counsel

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00646 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.574

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

A primary area of my responsibility in the past decade has been to serve as a mediator in the two major federal court cases described below. I have also handled a wide range of arbitration and mediation cases. Due to the confidential nature of many ADR cases, I have not provided a full case identification for some of the cases or specific terms of resolution.

1. Mediation to Develop Class Action Remedial Decree: In 2005 Judge Paul L. Friedman appointed Judge David Tatel (of the U.S. Court of Appeals for the D.C. Circuit) and me as co-mediators to work with the parties in *Blackman v. District of Columbia*, C.A. No. 97-1629 (PLF) and *Jones v. District of Columbia*, C.A. No. 97-2402 (PLF) in an effort to develop an appropriate systemic remedy in these consolidated class action special education cases. Over a period of a year in 2005 – 2006, Judge Tatel and I conducted more than 44 mediation sessions with the parties as well as 20 additional conferences. I was exclusively responsible for the mediation in many of these sessions, given the demands of Judge Tatel's judicial schedule. A comprehensive consent decree tailored to address the specific violations at issue in this case was developed and ultimately approved by the District Court on August 24, 2006 subsequent to a fairness hearing. One year later, the parties agreed to my mediating (along with Clarence J. Sundram) pending disputes and crafting remedies to address serious compliance and educational service delivery issues evident from our monitoring report and reviews. Through this process, the parties were able to reach an agreement, rather than look to the Court for further hearings and external intervention.

2. Mediation of Systemic Remedy Issues under Consent Decree: As special master in *Vaughn G. v. Mayor and City Council of Baltimore*, C.A. No. MJG-84-1911, I have handled mediation responsibilities from the date of my appointment in 2000, including the development of objective outcome measures for the case to ensure its manageability; delivery of compensatory educational services to students; and annual district-wide education remedial plans. Significant progress has been made in this case, and it is now at the final resolution stage.

3. Mediation of *Bonnie Anderson v. CNN, et. al.* United States District Court, Northern District of Georgia, Atlanta Division, C.A. No. 1:03-CV-2482-JEC. This was a high profile employment discrimination and retaliation case brought by a former CNN Vice President that addressed both the plaintiff's individual treatment and the network's anchor recruitment practices.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00647 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.575

4. Arbitration of Large Group of Related Employment Discrimination Cases: Since June 2008 I have arbitrated a large number of related individual racial employment discrimination cases arising out of a class action, ultimately not certified, against a major national corporation. Significant case management and streamlining have been required to handle these cases, given their large volume and difficult evidentiary issues.

5. Mediation of *Jennifer DeBruyn v. the City of Marietta, et. al.*, a case filed in the United States District Court, Northern District of Georgia, Atlanta Division, C.A. No. 1:03-CV-3889 (JOF). The lawsuit involved sexual harassment allegations against certain city officials and the claim that the City had ignored the alleged conduct over time.

6. Arbitration of Viatical Insurance Contract Dispute: The case of *HF v. Estate of NZ* involved a dispute involving a company engaged in the purchase and sale of "life settlements" for insured individuals who need (usually due to fatal illness) to obtain advance cash payment in exchange for selling their life insurance interests. The company sought to recover funds it had paid for the insurance policy of the deceased policy holder as well as substantial attorney fees. Issues in the case included the mental competence of the policy holder, unconscionability in contractual practices, defenses under the McCarran Ferguson Act, and several other contract defenses. I ruled in favor of the company on substantive grounds, but denied attorneys' fees.

7. Arbitration of Constitutional Claims of Small Business Owner, *Rucker v. City of Lavonia*, United States District Court, Middle District of Georgia, Athens Division, C.A. No, 3:04-CV-075 (CDL): The plaintiff challenged the constitutionality of the city's occupation tax ordinance, alleging that the city had closed his business on the basis of his speech and associational activities and on arbitrary and capricious grounds, in violation of the First and Fourteenth Amendments. My decision found for the plaintiff on his Fourteenth Amendment claim but rejected plaintiff's First Amendment speech and association claims. As the plaintiff's business was small and the city similarly was small in population and resources, the hearing and court arbitration process offered an efficient, fair, and constitutionally meaningful public review of the claims in dispute.

8. Arbitration of Employment Discrimination Case: This employment pro se race discrimination case against a national corporation was tried over the course of multiple days. Substantial patience and communication efforts were required to ensure that the pro se plaintiff was able to understand the proceedings sufficiently for his case to be presented fairly

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00648 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.576

and adequately for decision, without alternatively improperly prejudicing the defendant.

9. Mediation of First Amendment Constitutional Claims of Students, *Shingler et al. v. Seminole County School District,* U.S. District Court, Middle District of Georgia, Albany Division, C.A. No. 6:01-CV-36-WLS: In this case, a group of students asserted that the school district's prohibition of the wearing of t-shirts and clothing reflecting the confederate flag and other similar insignia violated their rights under the First Amendment. The case involved a delicate and difficult balancing of the school district's legitimate educational policy interests with the potential constitutional interests of the plaintiff students.

10. Mediation of Estate Dispute: This mediation arose from protracted probate litigation of the estate of a prominent Atlanta attorney. Multiple parties with conflicting interests and claims, including ERISA as well as probate and contract claims, were involved. After a seventeen-hour mediation, the case was brought to a successful resolution.

b. Describe:

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

After law school, from 1977 to 1982, I worked with the Law Project, primarily handling civil litigation concentrated in the areas of federal constitutional and employment law, although I also maintained a general civil practice. I continued with this litigation practice focus when I started my own law firm in 1982. In the period 1982 to 1994, I handled all forms and levels of litigation, ranging from trial and appellate litigation in the state and federal courts to representation of clients in administrative hearings and arbitrations.

In 1994, I was appointed to serve as the first in-house general counsel for the Atlanta Public School District. I built a legal department for the school system and exercised close management over a wide range of legal affairs involving the school district. I advised the Board and top administration of the school district on a daily basis. I supervised outside and in-house counsel and handled selected litigation personally.

In late spring of 1998, I retuned to my private practice after receiving a fellowship award by the Open Society Institute to study labor relations and legal issues affecting teacher quality in the public schools. While the fellowship study and work with the Governor's Education Reform Commission constituted a primary focus of my work over the course of the next year and a half, I also handled an array of education and

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00649 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.577

employment related cases and matters, and I subsequently began my arbitration and mediation practice.

Since January 2000, I have devoted the majority of my time to work as a special master and monitor for the U.S. District Courts in Maryland and the District of Columbia. This work entails ongoing monitoring and review of implementation of federal court orders and legal compliance issues arising out of special education class action lawsuits against the city school systems in Baltimore and Washington, D.C. As a Special Master, I have played a critical role in working with the district court to manage the Baltimore case and in conducting hearings. I have combined this work with an active arbitration and mediation practice and additionally have handled some civil litigation during this period.

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

Between 1977 and 1994 I represented a broad range of individuals, including teachers, hospital attendants, nurses, law enforcement personnel, clerical employees, community groups, pilots, state administrators, and many others. My practice principally focused on constitutional and civil rights litigation, particularly in the employment realm. From 1994 through May 1998, I exclusively represented the Atlanta Board of Education and the staff of the school system. This representation involved many legal areas, including contract, construction, tort, employment, constitutional law, intellectual property, education law, local government, and communications law issues. Since 1998, my primary "clients" have been the Districts Courts in Baltimore and the District of Columbia as well as school districts in Georgia. As an arbitrator and mediator, I have handled employment, commercial, and civil rights disputes involving businesses, individuals, and governmental entities.

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

My practice focused on civil litigation through 2004. As the cases I handled most frequently entailed lengthy periods of discovery and preparation, trials were the culmination usually of at least two years of work. While I appeared in court with some regularity, this type of litigation practice does not involve frequent trials. As general counsel of the Atlanta Board of Education, my management and litigation oversight responsibilities precluded me from regularly appearing in court. However, I personally handled a number of cases requiring oral argument in court throughout my tenure. I also collaborated with outside counsel in developing trial and appellate strategy in other major cases as well as participated in the hearings in some of these cases.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00650 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.578

Since 2000, my practice has significantly shifted to focus on work as a special master, monitor, and arbitrator/mediator. In this capacity, I have conducted or participated in hearings on a regular basis. I also participated in state litigation that entailed appearances in court for oral argument. The percentages provided below are based on my cumulative law practice over the past thirty years and are an approximation.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 25%
   3. other courts:
   4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99%
   2. criminal proceedings: 1%

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

I have tried to verdict, judgment, or final decision approximately 12 cases as chief counsel, 17 cases as sole counsel, and 10 cases as associate counsel.

i. What percentage of these trials were:
   1. jury: 25%
   2. non-jury: 75%

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

I filed one petition for writ of certiorari with the Supreme Court of the United States, seeking review of a decision of the Georgia Supreme Court. The petition was not granted.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00651 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.579

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. *Kennedy v. Crittenden*, C.A. 200-MAC-WDO (M.D. Ga.) (Liability Orders and subsequent consent decrees entered, November 24, 1982; March 24, 1982; May 30, 1991)

This lawsuit was a ground-breaking class action employment case in the state of Georgia. The case was filed in 1977 as a class action on behalf of 2,300 African American employees and applicants against Central State Hospital, the Department of Human Resources, and the State Merit System. In his 1982 liability order, U.S. District Judge Wilbur Owens found a pervasive pattern and practice of race discrimination in the hospital and State Merit System's job selection, training, and classification practices, affecting employees extending from the lowest ranks of attendants and laundry workers to medical personnel and other professionals. In 1983, the court approved a Consent Decree providing for $3.3 million in back pay for the plaintiff class and comprehensive injunctive relief. After protracted contempt and enforcement proceedings in 1989 and 1990, the court expanded the Decree and required significant changes in the operation of the State Merit System to ensure fair and non-discriminatory personnel selection procedures on a statewide basis. I continued work on the case, including active participation in the State's revamping of its personnel selection procedures, until my 1994 appointment as general counsel to the Atlanta Board of Education. I represented the plaintiff class as joint lead counsel with Bensonetta Tipton Lane for most of the duration of the case.

The dates of representation were 1977 through 1994, and the case was litigated in the U.S. District Court for the Middle District of Georgia before the Honorable Wilbur D. Owens. My co-counsel included Fletcher Farrington (now deceased) and the Honorable Bensonetta Tipton Lane, prior to her appointment to the City of Atlanta Municipal Court. Her current contact information is: Superior Court of Fulton County, 185 Central Avenue SW, Suite T-1955, Atlanta, GA 30303-3643 (404-302-8535).

Opposing counsel were George P. Shingler and Wayne P. Yancey (co-lead counsel) as well as Susan Rutherford, all of whom worked for the Georgia Office of the Attorney General at that time. Current contact information is as follows: George P. Shingler, Six Concourse Parkway, Suite 2200, Atlanta, GA 30328 (770-512-0300); Wayne P. Yancey, 3697 Kelin Court, Lilburn, GA 30047 (770-979-6066); Susan Rutherford, State Law Department, 40 Capitol Square, S.W., Atlanta, GA 30334 (404-463-8850).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00652 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.580

2. *Smith v. Ward, et al.*, C.A. No. 3:93cv8 GET (N.D. Ga. 1993)

The plaintiff, a Coweta County firefighter recently returned from the Gulf War, presented a video at a public meeting of the Coweta County Commission. The video raised critical concerns regarding deficient fire equipment and safety conditions within the county and received significant attention in the local media. After a series of retaliatory measures were taken against the plaintiff following the video presentation, he filed suit, asserting claims under the First Amendment and the Veterans Re-Employment Act. A jury verdict and final order was entered in his favor. Major reforms subsequently were made in the fire department. I served as the plaintiff's lead trial counsel.

The date of representation was 1993. The case was litigated in the U.S. District Court for the Northern District of Georgia before the Honorable G. Ernest Tidwell. Co-counsel was Michael E. Kramer, 175 Trinity Avenue, SW, Atlanta, GA 30303 (404-688-6700) and opposing counsel were Walter O. Lambeth, Jr. (lead counsel) and William D. Deveney, both of whom then worked at Elarbee, Thompson, Sapp & Wilson, LLP, 229 Peachtree Street NE, Suite 800, Atlanta, GA 30303 (404-659-6700). Current contact information for Walter Lambeth, Jr. is 9 Prescott Walk, NE, Atlanta, GA 30307 (404-371-1669).

3. *Georgia Association of Educators, et al. v. Harris*, 749 F. Supp. 1110 (N.D. Ga. 1990)

This action involved a successful constitutional challenge to a newly enacted Georgia statute requiring the drug testing of job applicants for all positions in the state government and public schools. The District Court's Order enjoined the statute in its entirety because it was not specifically limited to a requirement of drug testing for safety sensitive positions and was unconstitutionally overbroad. The legislature declined to re-enact the statute in a more narrow form thereafter. I served as lead counsel in the case.

The date of representation was 1990, and the case was litigated in the U.S. District Court for the Northern District of Georgia before the Honorable Robert Hall.

Co-counsel were Michael E. Kramer, 175 Trinity Avenue, SW, Atlanta, GA 30303 (404-688-6700) and Elizabeth J. Appley, 235 Peachtree Street NE, Suite 2212, Atlanta, GA 30303 (404-523-3800), and principal opposing counsel (who was then serving in the Georgia Office of the Attorney General) was Wayne P. Yancey (lead counsel), 3697 Kelin Court, Lilburn, GA 30047 (770-979-6066).

4. *Wilson v. Department of Public Safety, et al.*, C.A. No. 84-1467A (N.D. Ga. 1985)

This sex discrimination and free speech retaliation action was successfully brought on behalf of the top female administrative officer in the Georgia Department of Public Safety. Judge William O'Kelley described the case as one of the most flagrant cases of retaliation he had ever heard. Evidence presented during the trial provided an early omen

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00653 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.581

of serious mismanagement problems in the Department of Public Safety that culminated in a major investigation pursued by the Georgia Bureau of Investigation and the State Attorney General's Office. I served as lead counsel for the plaintiff.

The dates of representation were 1983 through 1985. The case was litigated in the U.S. District Court for the Northern District of Georgia before Judge William O'Kelley. My co-counsel was Bensonetta Lane (prior to her judicial appointment), Superior Court of Fulton County, 185 Central Avenue SW, Suite T-1955, Atlanta, GA 30303-3643 (404-302-8535). Opposing counsel, both of whom worked for the Georgia Office of the Attorney General at the time and served as co-lead counsel, were George P. Shingler, Six Concourse Parkway, Suite 2200, Atlanta, GA 30328 (770-512-0300), and Wayne P. Yancey, 3697 Kelin Court, Lilburn, GA 30047 (770-979-6066).

5. *Consortium for Adequate School Funding in Georgia v. State of Georgia, et al.*, C.A. No. 2004-cv-1004 (Fulton County Superior Court), (Complaint filed September 14, 2004; Summary Judgment Motion denied August 11, 2008)

This lawsuit challenged the constitutional adequacy of state funding of public education in Georgia on behalf of 51 rural school districts and parents and children in these districts. The plaintiffs claimed that students were unable to obtain an adequate education as guaranteed by the Georgia Constitution due to insufficient state funding. I assumed a key role in the litigation team handling the case for the plaintiff school districts for three years, through critical stages of the litigation, before we transferred leadership due to financial constraints to a larger law firm in 2007. The new team of plaintiffs' counsel voluntarily dismissed the case in the latter part of September 2008 for other reasons. While the case was not successfully resolved, the significant policy and legal issues raised in the case were publicly raised throughout the State of Georgia.

The dates of representation were 2003 to September 10, 2008. Judge Roland Barnes served as the original judge in this case for the Fulton County Superior Court of Georgia. After his death, Judge Elizabeth Long, who held senior status, was assigned the case. Judge Craig Schwall was assigned the case in September 2008, subsequent to the reduction in funding for senior status judges. Co-counsel were Thomas A. Cox, 285 Peachtree Center Avenue, 2600 Marquis Two Tower, Atlanta, GA 30303 (404-373-3131), David Long, 333 Lowell Avenue, Mill Valley, CA 94941 (415-383-1942), Elizabeth J. Appley, 235 Peachtree Street NE, Suite 2212, Atlanta, GA 30303 (404-523-3800) (beginning on December 20, 2006), and Robert B. Remar, Brett A. Rogers, Daniel A. Cohen, and Christopher Golden, all with Rogers & Hardin, LLP, 229 Peachtree Street NE, 2700 International Tower, Atlanta, GA 30303 (404-522-4700) (the firm began representing the plaintiffs commencing July 11, 2007). Opposing counsel were Dennis Dunn, Stefan Ritter (lead counsel for the State) and Alfred Evans (now deceased), all of the State Law Department, 40 Capitol Square, SW, Atlanta, GA 30334-1300 (404-656-3300) and Alfred A. Lindseth, Rocco E. Testani (lead private counsel for the State) of Sutherland Asbill & Brennan 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309-3996 (404-853-8000).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00654 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.582

6. *Lane v. City of Atlanta, et al.*, 483 S.E. 2d 575, 267 Ga. 843 (1997)

In this declaratory judgment action, the plaintiff taxpayer contended that the Atlanta School System's setting of the tax millage rate in excess of 20 mills violated Article VIII of the 1983 Georgia Constitution. The Georgia Supreme Court ruled that the independent school system was authorized to set a tax millage rate above 20 mills under the grandfather provision contained in Article VIII. This case constituted a major challenge to the funding of public schools which potentially would have seriously undermined public education in the State of Georgia, the City of Atlanta, and other independent school districts. I served as co-counsel in the case, representing the Atlanta Public Schools.

The dates of representation were 1996 through 1997. The case was tried in the Superior Court of Fulton County, Georgia before the Honorable Isaac Jenrette. The Georgia Supreme Court affirmed the lower court's order. Co-Counsel were Emmet J. Bondurant and Paul H. Schwartz, at Bondurant, Mixson & Elmore, 1200 West Peachtree Street, Suite 3900, Atlanta, GA 30309 (404-881-4100). The City of Atlanta was also named as a defendant, and its counsel's appearances at hearings were handled by Joe M. Harris (lead counsel) and Joseph D. Young then of the City of Atlanta Law Department but currently located respectively at 205 Corporate Center Drive Suite B, Stockbridge, GA 30281 (678-610-8155) and One Atlantic Center, Suite 2800, 1201 West Peachtree Street, Atlanta, GA 30309 (404-736-7828); Holland & Knight, 1201 W. Peachtree Street, Atlanta, GA 30309; (404-817-8500), and Susan Forsling (current address T2955 Justice Center Tower, 185 Central Ave. SW. Atlanta, GA 30303). Opposing counsel was Robert J. Proctor, of Proctor Hutchins, 8010 Roswell Road, Suite 250, Atlanta, GA 30350 (770-394-3500).

7. *Lucas v. Polk County School District, et al.*, C.A. No. 4:90cv125-HLM (N.D. Ga. 1990)

A jury verdict was rendered for the plaintiff teacher on all promotion and retaliation claims raised in this free speech and age discrimination lawsuit against the Polk County School District. The verdict triggered rapid changes in the School Board and its management of the Polk County School System. I served as lead counsel for the plaintiff.

The dates of representation were 1990 through 1992. The case was litigated in the U.S. District Court of the Northern District of Georgia before Hon. Harold L. Murphy. Co-counsel was Matthew C. Billips, 567 Ladonna Drive, Decatur, GA 30032 (404-298-8995). Opposing counsel was Sam S. Harben, Jr., Harben & Hartley Jewell Parkway, Suite 750, Gainesville, GA 30501 (770-534-7341).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00655 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.583

8. *Alford v. The Georgia Public Service Commission, et al.*, 418 S.E. 2d 13, 262 Ga. 386 (1992)

This case established new precedent regarding the interpretation of the State of Georgia's Employment Retirement Act, holding that the State could not circumvent specific statutory requirements in the Employment Retirement Act. I was the plaintiff's sole counsel in the case.

The dates of representation were 1990 through 1992. The case was tried in the Superior Court of Fulton County, Georgia before Judge William W. Daniel. My opposing counsel were Charles Richards and Susan Rutherford (co-lead counsel), both then with the State Law Department, 40 Capitol Square, SW, Atlanta, GA 30334 (404-656-3300). Ms. Rutherford continues to work at the State Law Department. Mr. Richard's current contact information is Building One, Suite 200, 2100 East Exchange Place, Tucker, GA 30084 (770-414-3655).

9. *Atlanta City School District v. Dowling*, 466 S.E. 2d 588, 266 Ga. 177 (1996)

This case against the Atlanta Public Schools resolved in the school district's favor significant and complex legal issues involving general damages remedies in cases brought under 42 U.S.C. §1983 where a public employee has previously obtained complete back pay relief and reinstatement through state administrative and judicial procedures. I took over representation of the case from private counsel upon becoming the district's general counsel and argued the case before the Georgia Supreme Court, which reversed the decision of the Court of Appeals.

The dates of representation were 1994 to 1996. The trial court judge was Hon. Elizabeth J. Long. I appeared solely before the Supreme Court. Co-counsel was Bruce H. Beerman, 171 17th Street NW, Suite 1100, Atlanta, GA 30363 (404-815-3000), and opposing counsel was R. Mason Barge, 379 Redland Road, GA 30309 (404-351-2977).

10. *Kim et al. v. Dekalb Farmers Market, et al.*, C.A. No. 1:88cv2767-HTW (N.D. Ga. 1988)

This lawsuit served as a direct catalyst to the Equal Employment Opportunity Commission's issuance of religious discrimination policy guidelines and regulations specifically dealing with coercive "New Age" training programs and "New Age" religious activity. The case challenged the employer's requirement that employees actively participate in "New Age" training programs as a condition of employment. The plaintiffs included former management employees with a wide range of religious and cultural backgrounds: Catholic, Baptist, Episcopalian, Jewish, Hindu and Muslim. The case was successfully settled. I served as lead counsel for the plaintiffs.

The dates of representation were 1988 through 1999. The case was litigated in the U.S. District Court for the Northern District of Georgia before Hon. Horace T. Ward. Co-counsel was James Zito, 150 E. Ponce de Leon Avenue, Suite 200, Decatur, GA 30030

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00656 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.584

(404-574-2441). Opposing counsel was Edward D. Buckley, Buckley & Klein, LLP, 1180 W. Peachtree Street, Suite 1100, Atlanta, GA 30309 (404-781-1100).

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

My most significant legal activities in the last decade have been as a special master and monitor for the federal courts as well as my work as an arbitrator and mediator. As a special master and mediator, I have engaged in detailed investigation and fact finding, report drafting, mediation, and the development of significant remedial solutions for the court and parties based on the credibility of my reviews and judgment. As an arbitrator and mediator, I have resolved a challenging variety of cases, some of which had been mired in litigation for many years.

Since 1994, I have represented school districts throughout Georgia, both as general counsel for the Atlanta Public Schools and as private litigation counsel for other districts. As the Atlanta school district's first in-house general counsel during a major period of reform, I devoted significant time to addressing the systemic vacuum of legal procedures relating to critical areas of potential liability as well a major backlog of litigation and pending claims. I provided legal counsel to the board and district leadership staff. I developed organizational procedures for the school district to handle review of contracts, new initiatives, the investigation of discrimination and harassment charges brought by employees and students, and the handling and review of student disciplinary measures. I also lead and participated in training of staff on employment and student related legal issues. Finally, as general counsel, I played a vital role in representing the school system in a wide range of cases. As private counsel for rural school districts throughout Georgia, I litigated school funding issues that carry enormous educational and fiscal consequences in low wealth districts.

My private law practice has involved both litigation and legal counseling. In the period before 1994, I worked closely with individuals as well as community and employee groups, providing legal advice on employment and labor law issues as well as zoning and development disputes. I represented a broad range of individuals and groups in civil litigation and was particularly successful in resolving cases at the trial court level.

I have also devoted my energies to service with a variety of State Boards and Commissions as well as non-profit organizations. My legal experience has played an invaluable role in this service. Additionally, I mentored a number of students through my role as an adjunct faculty member at Emory University Law School.

I have never performed any lobbying activities.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00657 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.585

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

I taught as an adjunct professor of law at Emory University Law School during the period 2004 – 2007. The courses taught were:

Education Law and Policy Seminar, 2004 and 2005
Education Law and Policy Class (Non-seminar), 2006
These classes covered the same overall subject matter, including the wide scope of federal and state education related legislation and civil rights and constitutional case law that govern the provision of education in the United States.

Complex Education Litigation Clinic, 2007
This class provided students with supervised clinical experience and training in handling complex public interest litigation involving public education, including state constitutional and taxation issues. It also included training on discovery management.

In addition to my formal teaching, I have had the following academic affiliations:

Visiting Scholar, Georgia State University, College of Education, Department of Policy Studies (1998 – 1999)
Fellow / Scholar, Open Society Institute, New York, New York (1998 – 1999)
Scholar, Annenberg Institute, Providence, Rhode Island (1998 – 1999)

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

None.

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

I have no plans, commitments, or agreements to pursue outside employment.

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00658 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.586

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I have no family members or other persons, parties, categories of litigation, or financial arrangements that are likely to present potential conflicts-of-interest when I assume the position of United States District Judge. I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which former co-counsel serve as counsel for a party or where I have previously represented a party. If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and recuse myself and/or disclose relationships as appropriate.

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

If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and recuse myself where necessary and/or disclose relationships as appropriate to the parties. I will endeavor at the outset of each case to identify any potential conflict or appearance of conflict. I will also seek the advice of colleagues and of the Judicial Conference as needed in handling any such conflict or appearance of conflict.

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

I have provided pro bono services for disadvantaged clients throughout my legal career as well as assisted other lawyers who sought the benefit of my guidance and experience in representing such clients. My efforts have taken various forms over the course of my legal practice. Over the last two decades, I devoted substantial time to ensuring that all children in our society are guaranteed the fundamental protections of law and have access to the strong educational foundation essential to their participation in a democratic

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00659 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.587

society. This commitment led me to serve on the Governor's Education Reform Commission in Georgia, Hands on Atlanta (the city's largest volunteer organization), and the National Faculty. My work with these organizations entailed more than 800 hours of pro bono service.

Since becoming a lawyer in 1977, I have provided pro bono legal consultations on a regular basis to impoverished or non-represented individuals seeking legal assistance. Until I became general counsel of the city school district in 1994, I provided approximately 200 hours annually of pro bono legal consulting assistance on consumer, landlord/tenant, employment, and education matters. Although my travel schedule in the last decade has restricted my availability, I continue to provide approximately 70 hours of pro bono legal consultation assistance annually. As an extension of this work, I have participated in a variety of citizen and community group forums so as to broaden public awareness regarding basic legal issues.

I have litigated a number of pro bono cases throughout my career. The most demanding of these involved my representation of community groups in a zoning case that resulted in significant additional industrial development in an inner city low/moderate income residential neighborhood in Atlanta. While a favorable Superior Court decision on behalf of the clients was ultimately reversed by the Georgia Supreme Court, we were able, as a result of the litigation and community advocacy, to negotiate a plan with the state, the city, and defendants to alleviate the most severe effects of the development. This case involved at least 1,500 hours of work.

26. **Selection Process**:

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

The Georgia Democratic Congressional Delegation appointed a selection committee chaired by former Congressman George W. "Buddy" Darden. The committee subsequently screened a large initial list of applicants and requested that a subset of applicants submit full written applications. I submitted a resume and letter of interest in February 2009 and a formal application in March 2009. I was interviewed by the committee on April 13, 2009. I was among the applicants whose names were thereafter submitted to the White House as a finalist for one of the open judicial positions in the Northern District of Georgia.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00660 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.588

On October 14, 2009, I received a call from the Office of Legal Policy for the United States Department of Justice. Since that date, I have been in contact with pre-nomination officials at the Department of Justice. I was interviewed by Department of Justice officials and a member of the White House Counsel's office on December 18, 2009. The President submitted my nomination to the Senate on March 17, 2010.

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

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00661 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.589

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
TOTENBERG, AMY M.	NORTHERN DISTRICT OF GEORGIA	03/15/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
DISTRICT JUDGE - NOMINEE	☑ Nomination, Date 03/17/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 02/28/2010
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.**	
P.O. BOX 17521 ATLANTA, GA 30316-7521	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. SOLE PROPRIETOR	LAW OFFICE OF AMY TOTENBERG
2. SPECIAL MASTER	U.S. DISTRICT COURT, DISTRICT OF MARYLAND
3. MONITOR	U.S. DISTRICT COURT, DISTRICT OF COLUMBIA
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting TOTENBERG, AMY M.	Date of Report 03/15/2010

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	LAW OFFICE OF AMY TOTENBERG	$370,553.00
2.	2009	LAW OFFICE OF AMY TOTENBERG	$398,000.00
3.	2010 YTD	LAW OFFICE OF AMY TOTENBERG	$22,044.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2008	SELF-EMPLOYED TECHOLOGY CONSULTANT
2.	2008	SELF-EMPLOYED OFFICE FINANCIAL MANAGER
3.	2009	SELF-EMPLOYED TECHOLOGY CONSULTANT
4.	2009	SELF-EMPLOYED OFFICE FINANCIAL MANAGER
5.	2010	SELF-EMPLOYED TECHOLOGY CONSULTANT
6.	2010	SELF-EMPLOYED OFFICE FINANCIAL MANAGER

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting TOTENBERG, AMY M.	Date of Report 03/15/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	EMPLOYEE 1	EMPLOYEE PORTION OF 401K PLAN	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
TOTENBERG, AMY M.	03/15/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. BANK OF AMERICA		None	J	T	Exempt				
2. BRANDES INTERNATIONAL EQUITY F UND INST	B	Dividend	L	T					
3. CALAMOS GROWTH FUND CLASS A		None	K	T					
4. CAPMARK BANK	A	Interest	L	T					
5. DFA INTL SMALL CAP VALUE PORTF OLIO	A	Dividend	J	T					
6. DFA U.S. SMALL CAP VALUE PORTF OLIO	A	Dividend	K	T					
7. DISCOVER BANK	A	Interest	L	T					
8. DODGE & COX STOCK FUND	B	Dividend	M	T					
9. FAIRHOLME FUND	A	Dividend	K	T					
10. FIDELITY - VIP CONTRAFUND® POR TFOLIO - SERVICE CLASS 2		None	K	T					
11. FIDELITY - VIP MID CAP PORTFOLIO - SERVICE CLASS 2		None	K	T					
12. FIDELITY- VIP VALUE STRATEGIES PORTFOLIO SERVICE CLASS 2		None	J	T					
13. FIRST COMM BANK	A	Interest							
14. FORT MCPHERSON CREDIT UNION	A	Dividend	J	T					
15. GMAC BANK UT	A	Interest	K	T					
16. HUNTINGTON NATL	A	Interest	K	T					
17. MERIDIAN VALUE FUND	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
TOTENBERG, AMY M.	03/15/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
18. MUTUAL BEACON FUND CL Z	B	Dividend	L	T					
19. MUTUAL GLOBAL DISCOVERY FD CL Z	A	Dividend	L	T					
20. NATIONWIDE FIXED ACCOUNT	B	Interest	L	T					
21. PIMCO LOW DURATION FUND INSTL CL	A	Dividend	J	T					
22. PIMCO REAL RETURN FUND INSTL CL	A	Dividend							
23. PIMCO TOTAL RETURN FUND INSTL CL	C	Dividend	L	T					
24. PIMCO UNCONSTRAINED BD FD INST CL	A	Dividend	J	T					
25. ROYCE PREMIER FUND INVESTMENT CL		None	J	T					
26. SCHWAB MUNI MONEY FUND VALUE ADVANTAGE SHARES	B	Dividend							
27. SUNTRUST BANK ACCOUNTS	A	Interest	M	T					
28. TA CLARION GLOBAL REAL ESTATE SECURITIES VP		None	J	T					
29. TA U.S. GOVERNMENT SECURITIES VP		None	J	T					
30. THIRD AVE REAL ESTATE VALUE FUND	A	Dividend	K	T					
31. THIRD AVENUE INTL VALUE FD INSTL CL		None	K	T					
32. VANGUARD 500 INDEX SIGNAL	A	Dividend	K	T					
33. VANGUARD INTER TERM TAX EXEMPT FD INVESTOR SHS	A	Dividend	M	T					
34. VANGUARD LTD TERM TAX EXEMPT ADMIRAL SHARE	C	Dividend	M	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
TOTENBERG, AMY M.	03/15/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
35. VANGUARD LIMITED TERM TAX EXEMPT INVESTOR SHR	C	Dividend	M	T					
36. VANGUARD PRIMECAP CORE FUND	A	Dividend	K	T					
37. VANGUARD PRIMECAP FUND	A	Dividend	L	T					
38. WACHOVIA BANK ACCOUNT	A	Interest	K	T					
39. WINTERGREEN FUND	A	Dividend	K	T					
40. CASH IN BROKERAGE ACCOUNTS		None	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting TOTENBERG, AMY M.	Date of Report 03/15/2010

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting TOTENBERG, AMY M.	Date of Report 03/15/2010

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 Amy Mid Totenberg

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		373	782	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		987	789	Notes payable to relatives			
Unlisted securities--add schedule		133	985	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		260	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	Employee Portion of 401K Plan		33	691
Cash value-life insurance							
Other assets itemize:							
1/3 Interest in Guarneri Violin	1	333	333				
				Total liabilities		33	691
				Net Worth	3	081	098
Total Assets	3	114	789	Total liabilities and net worth	3	114	789
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a 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	
BIIEX	17,708
CVGRX	34,926
DISVX	4,002
DFSVX	44,890
DODGX	105,842
FAIRX	38,990
MVALX	13,319
TBE1Z	78,024
TEB1Z	75,582
PTLDX	11,112
PTTRX	99,738
PFIUX	7,199
RYPRX	11,921
TAVIX	38,824
TAREX	32,135
VIFSX	17,335
VWIUX	131,741
VMLUX	121,232
VPCCX	23,145
VPMCX	62,304
WGRNX	17,824
Total Listed Securities	**987,789**
Unlisted Securities	
TA U.S. Government Securities VP	6,928
TA Clarion Global Real Estate Securities VP	7,396
Fidelity - VIP Contrafund Portfolio	24,890
Fidelity - VIP Mid Cap Portfolio	20,853
Fidelity - VIP Strategies Portfolio	12,404
Nationwide Fixed Account	61,514
Total Unlisted Securities	**133,985**
Real Estate Owned	
Personal Residence	224,400
Vacation Cabin (Cabin only, on leased land)	36,500
Total Real Estate Owned	**260,900**

AFFIDAVIT

I, Amy Mil Totenberg, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 15, 2010
(Date)

Amy Mil Totenberg

Notary Public
Atlanta, Georgia

66720.599

Ms. TOTENBERG. And I did forget my sister, Jill Totenberg, and that would be like I'm going to be really in trouble. But she's right there. I can hear her whispering.

Senator DURBIN. Judge Boasberg.

STATEMENT OF JUDGE JAMES E. BOASBERG, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Judge BOASBERG. Thank you very much. I am also very honored to be here and would like to introduce my family. I'll start with my father, Tersh Boasberg, who is here. My mother, Sally Boasberg, would very much like to be here. She's, however, in the hospital recovering from cancer surgery, but the good news is she is watching on the Webcast, which is being engineered by my sister, Margaret, who is with her in the hospital. So they're watching now.

My other sister, Melissa Boasberg, is here, and she is also representing my brother, Tom Boasberg, who now has the job that now Senator Michael Bennett from Colorado formerly had as the superintendent of the public schools in Denver.

I'd also like to mention my wife, Liddy Manson, who is here, and also my children; my son, Daniel, and my twin daughters, Katharine and Anne. And as impressed as they are by this August proceeding, I think they're even more excited that they got out of school early.

Senator DURBIN. Thank you very much.

Ms. Jackson.

[The biographical information follow.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00672 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Emanuel ("Jeb") Boasberg

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

   United States District Judge for the District of Columbia

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

   District of Columbia Superior Court
   500 Indiana Avenue, N.W.
   Washington, D.C. 20001

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

   San Francisco, California; 1963.

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

   1987-1990, Yale Law School; J.D., 1990
   1985-1986, Oxford University; M.St., 1986
   1981-1985, Yale College; B.A. (*magna cum laude*), 1985

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

   2002 – Present
   District of Columbia Superior Court
   500 Indiana Avenue, NW
   Washington, D.C. 20001
   Associate Judge

66720.600

2003
George Washington University Law School
720 20th Street, NW
Washington, D.C. 20052
Visiting Lecturer (spring term)

1996 – 2002
United States Attorney's Office for the District of Columbia
555 4th Street, NW
Washington, D.C. 20530
Assistant United States Attorney

1995 – 1996
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, NW
Washington, D.C. 20036
Associate

1991 – 1994
Keker & Van Nest
710 Sansome Street
San Francisco, California 94111
Associate

1990-1991
United States Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, California 91105
Law Clerk to Hon. Dorothy W. Nelson

1989
Wilmer, Cutler & Pickering
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Summer Associate

1989
Williams & Connolly
725 12th Street, NW
Washington, D.C. 20005
Summer Associate

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00674 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.601

1989
Yale College
One Prospect Street
New Haven, Connecticut 06520
Visiting Lecturer (spring term)

1988
Munger, Tolles & Olson
355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

1986-1987
The Horace Mann School
231 West 246th Street
Riverdale, New York 10471
History Teacher and Girls' Varsity Basketball Coach

Uncompensated
St. Albans School Governing Board
Member (2010 – present)

Yale Law School Class of 1990
20th Reunion Co-Chair (2010)

St. Albans School Parents' Association
Vice President (2009-2010)

Yale Law School Association of Washington, D.C. (1995 – present)
Vice President (1997 – 2001)

St. Albans School, Class of '81 Bishop John T. Walker Fellowship Committee
Chair (1995 – present)

Boasberg Historic Preservation Fund
Vice President (1995 – 2006)

Yale Class of 1985
Secretary (1995 – 2000)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00675 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.602

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

   I registered for selective service, but never enlisted in the Military.

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

   United States Attorney's Office, Special Achievement Awards
   Yale Law School, Sutherland Cup (moot court)
   Yale College, Dick Derby Award

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.
   Edward Bennett Williams Inn of Court
   Superior Court of the District of Columbia
   Committee on Judicial Education (2003 – present)
   Committee on the Selection and Tenure of Magistrate Judges (2003 – present)
   Chair, Committee on Criminal Jury Instructions (2006 – present)
   Committee to Select Criminal Justice Act Attorneys (2009)

10. **Bar and Court Admission**:

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

       California, 1991
       District of Columbia, 1996

       I have been an inactive member of the California Bar since 1997. There has been no lapse in membership.

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

       United States Court of Appeals for the D.C. Circuit, 1997
       United States Court of Appeals for the Fourth Circuit, 1995
       United States Court of Appeals for the Ninth Circuit, 1991
       United States District Court for the Central District of California, 1993
       United States District Court for the District of Arizona, 1995; deactivated 1999

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00676 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.668

11. **Memberships**:

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

St. Albans School Governing Board (2010 – present)
Yale Law School Class of 1990
20th Reunion Chair (2010)
St. Albans School Parents' Association
Vice President (2009-2010)
Lawyers' Club (2008 – present)
Yale Law School Association of Washington, D.C. (1995 – present)
Vice President (1997-2001)
Yale Club of Washington, D.C. (1995 – present)
St. Albans School, Class of '81 Bishop John T. Walker Fellowship Committee
Chair (1995 – present)
Boasberg Historic Preservation Fund
Vice President (1995 – 2006)
Ellington Development Council (1995 – 2001)
Yale Class of 1985
Secretary (1995 – 2000)
25th Reunion Attendance Committee (2010)

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

St. Albans School is a school for boys. None of the organizations discriminates.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00677 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.604

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

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

Product Placement in Movies Cannot Be Regulated as Commercial Speech Under the First Amendment, WLF Legal Backgrounder (Jan. 22, 1993) (co-author).

With Malice Toward None: A New Look at Defamatory Republication and Neutral Reportage, 13 COMM/ENT 455 (Spring 1991) (cited in 5 published opinions)

Seditious Libel v. Incitement to Mutiny: Britain Teaches Hand and Holmes A Lesson, 10 Oxford J. Legal Studies 106 (1990), *republished with Spanish translation* in 28 Comp. Juridical Review 77 (1991).

Chancery as Megalosaurus: Lawyers, Courts, and Society in Bleak House, 21 University of Hartford Studies in Literature 38 (1989).

While at Oxford, I wrote a movie review for a magazine called *Isis* in November 1985. In college, I wrote two pieces on the Washington Redskins for the *Yale Daily News* in January 1984. In high school, I wrote many sports articles for the *St. Albans News*. I did not retain copies.

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

None.

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

June 26, 2002, Hearing before the Committee on Governmental Affairs, United States Senate, "Nomination of James 'Jeb' E. Boasberg."
A transcript of the hearing on my confirmation to Superior Court of the District of Columbia is available at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:80608.wais

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00678 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.605

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

During my time at the U.S. Attorney's Office and on the Superior Court, I have spoken to a variety of different groups on legal topics. I have searched my files and public databases in an effort to identify every occasion, but it is possible I have omitted some. I have attached all of the notes, outlines, or speech texts that I have been able to find. They are indicated in bold.

May 24, 2010 – United States District Court for the District of Columbia – remarks at the investiture of U.S. Attorney Ronald C. Machen, Jr.

April 28, 2010 – Superior Court of the District of Columbia – talk to St. Albans School 7th Grade, about how the court works. I spoke without notes.

April 1, 2010 – Georgetown University Law Center, Washington, D.C. – talk to a first-year Criminal Procedure class on Fourth Amendment issues. (The same or similar notes were used for all of my talks to these classes over the years.)

December 4, 2009 – Superior Court of the District of Columbia – talk to other judges in the Criminal Division on self-defense issues.

November 5, 2009 – Georgetown University Law Center, Washington, D.C. – talk to a first-year Criminal Procedure class on Fourth Amendment issues.

July 16, 2009 – Office of the U.S. Attorney, Washington, D.C. – talk to Assistant U.S. Attorneys about prosecuting Domestic Violence cases.

April 24, 2009 – Office of the U.S. Attorney, Washington, D.C. – talk to police officers of the Metropolitan Police Department of Washington, D.C., about courtroom testimony.

February 25, 2009 – Georgetown University Law Center, Washington, D.C. – talk to a first-year Criminal Procedure class on Fourth Amendment issues.

December 17, 2008 – Superior Court of the District of Columbia – lecture to members of the Criminal Justice Act Bar on the mechanics of jury selection. The

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00679 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.686

session was not recorded, and any handwritten notes from which I spoke have been discarded.

July 31, 2008 – D.C. Circuit Historical Society, Washington, D.C. – In a program on technology in the courtroom, I gave a mock closing argument at the assassination trial of Charles Guiteau, the murderer of President James Garfield.

April 4, 2008 – Georgetown University Law Center, Washington, D.C. – talk to a first-year Criminal Procedure class on Fourth Amendment issues.

March 20, 2008 – Superior Court of the District of Columbia – talk to Sidwell Friends School 7th and 8th Graders about being a judge and the criminal law. I spoke without notes.

March 9, 2008 – Kehila Congregation, Chevy Chase, MD – speech on the topic of "Dickens and the Jews."

December 12, 2007 – Superior Court of the District of Columbia – lecture to members of the Criminal Justice Act Bar on trial tips.

December 7, 2007 – Superior Court of the District of Columbia – talk to judges entering the Felony II assignment about criminal procedure issues.

March 17, 2007 – Superior Court of the District of Columbia – talk to middle school students attending the 2007 Youth Law Fair about how the court works. I spoke without notes.

February 22, 2007 – Superior Court of the District of Columbia – talk to the Law Students in Court class on judging and tips for being a good courtroom advocate. Any notes from which I spoke have been discarded.

February 15, 2007 – Georgetown University Law Center, Washington, D.C. – talk to a first-year Criminal Procedure class on Fourth Amendment issues.

January 26, 2007 – Superior Court of the District of Columbia – participation on a panel with former jurors, who recounted how the Court could have improved their experience. Any notes from which I spoke have been discarded.

December 1, 2006 – Superior Court of the District of Columbia – talk to judges in the Criminal Division on issues relating to joinder and severance.

November 2, 2006 – Catholic University Law School, Washington, D.C. – participation on a panel, "Becoming a Lawyer." I am not aware if the session was recorded; I had no prepared notes or outline.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00680 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.607

May 22, 2006 – Office of the U.S. Attorney, Washington, D.C. – talk to Assistant U.S. Attorneys about prosecuting felony cases.

April 13, 2006 – Georgetown University Law Center, Washington, D.C. – talk to the Criminal Justice Clinic class on judging and tips for being an effective advocate.

April 12, 2006 – George Washington University Law School, Washington, D.C. – talk to seminar class on homicide cases.

March 23, 2006 – Superior Court of the District of Columbia – participation on a panel of judges who spoke to the Charlotte E. Ray American Inn of Court on "Techniques of Litigation – A View from the Bench." Any notes from which I spoke have been discarded.

March 2, 2006 – First District of the Metropolitan Police Department, Washington, D.C. – talk to new officers about testifying in court. Any notes from which I spoke have been discarded.

November 3, 2005 – Georgetown University Law Center, Washington, D.C. – participation on a panel in a program entitled "Litigating and Resolving Employment Cases: Views from the Bench." Any notes from which I spoke have been discarded.

October 26, 2005 – Superior Court of the District of Columbia - talk to 9th Grade students from Paul Public Charter School about the court system. I spoke without notes.

February 2005 – Georgetown University Law Center, Washington, D.C. – participation on a panel in an ALI-ABA sponsored program on Evidence Issues and Jury Instructions in Employment Cases. I am not aware if the session was recorded; I had no prepared notes or outline.

December 2004 – Superior Court of the District of Columbia – talk to judges in the Criminal Division on recent Fourth and Fifth Amendment decisions.

March 31, 2004 – Yale Law School Association, Washington, D.C. – speech at a regular meeting of the association on being a judge in the Superior Court. The session was not recorded, and any handwritten notes from which I spoke have been discarded.

March 19, 2004 – D.C. Bench-Bar Conference, Washington, D.C. – participation on a panel on closing arguments.

February 11, 2004 – George Washington University Law School, Washington, D.C. – talk to a seminar class on homicide cases. I spoke without notes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00681 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.68

January 14, 2004 – Superior Court of the District of Columbia – talk to students from Georgetown Day School on criminal law issues. I spoke without notes.

November 11, 2003 – Yale Law School, New Haven, CT – participation on a career-development panel, speaking about life as an Assistant United States Attorney Any notes from which I spoke have been discarded.

October 10, 2003 – George Washington University Law School, Washington, D.C. – speech to a CLE seminar on automobile negligence cases.

May 6, 2003 – District of Columbia Bar – participation on a panel at a CLE class on closing arguments. I am not aware if the session was recorded; I had no prepared notes or outline.

Since 2005, I have supervised the annual two-day September training for all new law clerks at the Superior Court. During that training, I have been on a panel of judges that discusses the judge-clerk relationship, and I have lectured on drafting judicial opinions. Any materials I have kept from those sessions is attached.

When I was an Assistant United States Attorney, I occasionally participated in office training of new or more junior AUSAs on trial skills – *e.g.*, opening statements, closing arguments, direct and cross-examination. I have retained no notes from such sessions.

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

As an Assistant United States Attorney, I gave a few brief interviews after homicide trials I conducted. I have listed below and attached all of these interviews that I could identify through a search of my records and internet databases, but it is possible that I have not been able to find them all.

Neely Tucker and Alia Ibrahim, *"Mesa Gets Life Terms in Gallaudet Slayings,"* The Washington Post, July 11, 2002, at B01.

Arlo Wagner, *"Gallaudet Killer Gets Life Sentence,"* The Washington Times, July 11, 2002, at B01.

Susan Roth, *"Mesa Sentenced to Life in Prison,"* Gannett News Service, July 11, 2002.

"Former Student Gets 6 Life Terms in the Murders of 2 Classmates," The Miami Herald, July 11, 2002, at A15.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00682 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.689

Gary Martin, *"Deaf Teens' Killer Gets Life,"* San Antonio Express-News, July 11, 2002, at 1B.

Derrill Holly, *"Six Life Terms for Murders of Two College Students,"* AP, July 10, 2002.

Derrill Holly, *"Former Gallaudet Student Convicted of Killing Classmates,"* AP, May 22, 2002.

Kevin Diaz, *"D.C. Jury Convicts Former Student of Gallaudet Murders,"* Star Tribune, May 22, 2002, at 1A.

Susan Roth, *"Mesa Convicted in Gallaudet Murder Trial,"* Gannett News Service, May 21, 2002.

Arthur Santana, *"Gallaudet Case Goes to Jury,"* The Washington Post, May 21, 2002, at B05.

Arthur Santana, *"Man Gets Life, No Parole, in Slayings,"* The Washington Post, Jan. 12, 2002, at B02.

Arthur Santana, *"D.C. Man Convicted of Women's Slayings,"* The Washington Post, Oct. 3, 2001, at B07.

Neely Tucker, *"National Zoo Shooter Gets 25-Year Term,"* The Washington Post, Mar. 17, 2001, at A01.

Arlo Wagner, *"Zoo Gunman Gets 25 Years in Prison,"* The Washington Times, Mar. 17, 2001, at A1.

Petula Dvorak, *"A Home in Hearts Left Behind,"* The Washington Post, Mar. 15, 2001, at B01.

Neely Tucker, *"17-Year-Old Admits to Shootings Outside Zoo,"* The Washington Post, Oct. 26, 2000.

Arlo Wagner, *"Youth Pleads Guilty to Zoo Shooting Spree That Wounded 7,"* The Washington Times, Oct. 26, 2000, at C1.

"Black Fire Fighters Cleared," The Sun Reporter, Aug. 4, 1994.

Jim Doyle, *"S.F. Probe Clears Leaders of Black Firefighter Groups,"* The San Francisco Chronicle, July 23, 1994, at A21.

Laurie Becklund and Roxane Arnold, *"Law Students Aid the Homeless,"* Los Angeles Times, Aug. 7, 1988, Metro; Part 2; Page 1.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00683 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.610

I also had brief interviews with newspaper reporters after basketball games I played in college and high school. I did not keep those clippings.

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

I was appointed by President George W. Bush in September 2002 to be Associate Judge of the Superior Court of the District of Columbia, following confirmation by the United States Senate.

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

Approximately 500.

i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	65%
civil proceedings	20%
criminal proceedings	80%

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

The only published opinions are:
United States v. Powell, 2008 D.C. Super. LEXIS 2 (June 17, 2008)
Pardue v. Center City Consortium Schools, Inc., 2003 D.C. Super. LEXIS 30 (July 29, 2003).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. United States v. Eric Gardner, 2004-FEL-7761. This was a homicide case in which the defendant was found guilty of killing a taxi driver during a robbery.

AUSA Michelle Jackson, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Thomas Dybdahl, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00684 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.611

2. United States v. Gerard Parker, 2004-FEL-2605. This was a homicide case in which the defendant was found guilty of beating a man to death after a fight outside a bar.

AUSA Michelle Jackson, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Thomas Dybdahl, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

3. United States v. Brian Copeland, 2008-CF1-3817. This was a first-degree sexual abuse case in which a man was convicted for raping his estranged wife.

AUSA Sharon Donovan, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Maribeth Raffinan, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

4. United States v. Neal King , 2007-CF3-27842. This was a case in which the defendant was convicted of assault with intent to kill for shooting a man in the middle of the day in a public courtyard.

AUSA Sean Tonoli, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Andrew Ferguson, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

5. United States v. James Brisbon, 2000-FEL-2555. This was a homicide case in which the defendant was found guilty of shooting a man to death in an alley.

AUSA William Frentzen, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Eve Hanan and Anna Rodriques, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

6. United States v. Odell Powell, 2006-FEL-23645. Although this case was eventually tried, its importance was in the defense's challenge to the Superior Court's jury selection system on the ground of improper racial composition. After months of discovery, I upheld the current operation of the system in an opinion that is attached.

AUSA Amy Zubrensky, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel Jason Tulley, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

7. WDG v. District of Columbia, 00-5379. This was a property dispute between the District and a prominent developer regarding rights to certain valuable real estate. A lengthy trial ended with an award of over $70 million to the developer.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00685 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.612

Plaintiff's counsel: Michele Roberts, 1333 New Hampshire Ave., N.W.; Washington, DC 20036, 202-887-4306. Defense counsel: Daniel Rezneck, Office of Attorney General, 441 4th St., NW; Washington, DC 20001, 202-727-3401.

8. Pardue v. Center City, 02-5459. I granted summary judgment to the defense on subject matter jurisdiction grounds in a case pitting claims of discrimination against free exercise of religion.

Plaintiff's counsel: Scott Oswald, 888 17th St., NW; Washington, DC 20006, 202-331-3911; Defense counsel: Emmitt Flood and Lisa Duggan, 725 12th St., NW; Washington, DC 20005; 202-434-5000.

9. Kreuzer v. George Washington University, 03-3645. After many motions and a preliminary injunction hearing, I granted summary judgment to the defendant in a property dispute between the university and a neighbor.

Plaintiff's counsel: Michael Hannon, 1901 18th St., NW; Washington, DC 20009, 202-232-1907; Defense counsel, Vincent Mark Policy, 1620 L St., NW; Washington, DC 20036, 202-452-1400.

10. Wilson v. WMATA, 02-4638. In this negligence action, a jury awarded the plaintiff $70,000 for injuries suffered while falling off of a Metrobus. I subsequently granted the defendant's motion for judgment as a matter of law, finding no causation, and vacating the verdict.

Plaintiff's counsel: Tony Shaw, deceased; Defendant's counsel: Frederic Schuster, 600 5th St., NW; Washington, DC 20001, 202-962-1093.

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

1. United States v. Powell, 2008 D.C. Super. LEXIS 2 (June 17, 2008). Counsel were AUSA Amy Zubrensky, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; and Defense Counsel Jason Tulley, Public Defender Service, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

2. Pardue v. Center City Consortium Schools, Inc., 2003 D.C. Super. LEXIS 30 (July 29, 2003). Counsel were Scott Oswald (Plaintiff's counsel), 888 17th St., NW; Washington, DC 20006, 202-331-3911, and Emmitt Flood and Lisa Duggan (Defense counsel), 725 12th St., NW; Washington, DC 20005; 202-434-5000.

3. United States v. Richard Purnell, 2007 CF2 022457, AUSA Robert Okun, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defense Counsel: George Rickman, 3814 13th St., NW; Washington, DC 20011, 202-723-3955.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00686 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.613

4. United States v. Kacy Queen, 04-FEL-3431, AUSA Robert Okun, 555 4th St., N.W.; Washington, DC 20530, 202-514-7586; Defendant *pro se*.

5. United States v. Donovan Braxton, 2005 CTF 4611, AAG Duane M. Kokesch, 441 Fourth Street, NW; Room #450-N; Washington, DC 20001, 202-727-3401; Defense Counsel: Effie Forde, 1717 K St., NW; Suite 600; Washington, DC 20036, 202-508-1843.

6. Kreuzer v. George Washington University, 03-3645, Plaintiff's counsel: Michael Hannon, 1901 18th St., NW; Washington, DC 20009, 202-232-1907; Defense counsel: Vincent Mark Policy, 1620 L St., NW; Washington, DC 20036, 202-452-1400.

7. Hicks v. Howard, 02-7572, Plaintiff's counsel: Sarah Starrett, 1717 Massachusetts Ave., NW; Suite 704; Washington, DC 20036; 202-328-7300; Defense counsel: Daniel Prywes, 600 – 14th St., NW; Washington, DC 20005; 202-508-6094.

8. Fowler v. J.A. Jones, 02-8130, Plaintiff's counsel: Michael Hoare, 1400 K St., NW, Suite 1000; Washington, DC 20005; 202-408-7901; Defense counsel: Connie Bertram, 777 6th St., NW; Washington, DC 20001; 202-728-7122.

9. Cavaceppi v. Rock Creek Int'l School, 03-6490, Plaintiff's counsel: Michael Hoare, 1400 K St., NW, Suite 1000; Washington, DC 20005; 202-408-7901; Defense counsel: Thomas Mugavero, 515 King St.; Suite 450; Alexandria, VA 22314; 703-280-9273.

10. District of Columbia v. CVS Corp., 03-4431, Plaintiff's counsel: Don Resnikoff, AAG, 441 Fourth St., NW; Washington, DC 20001; 202-727-3401; Defense counsel: Deana Cairo, 500 8th St., NW; Washington, DC 20004; 202-799-4523.

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

I am not aware of any case in which certiorari was either requested or granted.

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

Digsby v. United States, 981 A.2d 589 (D.C. 2009) (reversal for admission of DEA report without chemist post-Crawford).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00687 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.614

Teal v. United States, 974 A.2d 262 (D.C. 2009) (remanded for findings regarding government's possible interference with witness).

Bolton v. Bernabei & Katz, 954 A.2d 953 (D.C. 2008) (remanded for further consideration of motion to amend answer).

Doe v. Metropolitan Police Department, 948 A.2d 1210 (D.C. 2008) (reversal of grant of summary judgment on FOIA request).

Pratt v. DCHA, 942 A.2d 656 (D.C. 2008) (reversal of judgment of possession to Landlord in Landlord-Tenant case).

Callaham v. United States, 937 A.2d 141 (D.C. 2007) (reversal for admission of DEA report without chemist post-Crawford).

Howard v. United States, 929 A.2d 839 (D.C. 2007) (reversal for admission of DEA report without chemist post-Crawford).

Valdez v. United States, 906 A.2d 284 (D.C. 2006) (reversed and remanded for defendant to have opportunity to prove entitlement to withdraw plea).

Washkoviak v. SLMA, 900 A.2d 168 (D.C. 2006) (reversal of grant of motion to dismiss).

Zuurbier v. MedStar, 895 A.2d 905 (D.C. 2006) (reversal in part of summary judgment order).

Medrano v. Osterman, 885 A.2d 310 (D.C. 2005) (vacating and remand of determination of binding contract).

Levitt v. D.C. Office of Employee Appeals, 869 A.2d 364 (D.C. 2005) (reversal of affirmance of OEA Board).

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

Every decision I have issued (with the exception of the two listed in subsection (b)) has been unpublished. I have electronic copies of most of these. In addition, the Superior Court's electronic database has electronic copies of all orders and opinions issued since 2005. Before the Court implemented an electronic database in late 2005, paper copies of orders were maintained in files, which should be in off-site storage.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00688 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.615

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I handle constitutional issues – specifically, 4th and 5th Amendment suppression claims – on a regular basis in my criminal cases. I routinely hold evidentiary hearings and issue oral rulings from the bench. I have not written any opinions in these cases. My two published opinions also concern constitutional issues. Pardue v. Center City Consortium Schools, Inc., 2003 D. C. Super. LEXIS 30 (July 29, 2003), deals with the Free Exercise Clause of the First Amendment. The D.C. Court of Appeals affirmed my ruling at 875 A.2d 669 (D.C. 2005). United States v. Powell, 2008 D.C. Super. LEXIS 2 (June 17, 2008), addresses the jury-selection system in the Superior Court. If the case has been appealed, no ruling from the Court of Appeals has yet issued.

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

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

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

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

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

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

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

The only two cases that I can recall are Cafritz v. Sibley Memorial Hosp., 01-006294, a medical malpractice action brought by Peggy Cooper Cafritz., and the case of Kreuzer v. George Washington University, 03-3645. In the former, I recused myself because I knew Ms. Cafritz socially. In the latter, the plaintiff moved that I recuse myself because I had taught at George Washington Law School, and the university was the defendant. I denied the motion on the grounds

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00689 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.616

that my association with the university had all but ended at the time the suit was filed, the motion was filed over a year after the plaintiff had been informed of my association, and the motion was legally deficient by failing to include the necessary certificate of good faith. The District of Columbia Court of Appeals affirmed my decision not to recuse in a published opinion at 896 A.2d 238, 249-50 (D.C. 2006).

There is no court electronic database for cases prior to 2006, which is the time period when I was on a civil calendar. I have checked the electronic database for recusals from 2006 to the present, and none appear.

In all cases I have attempted to abide by the District of Columbia Code of Judicial Conduct, which requires recusal where a judge's impartiality might reasonably be questioned.

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

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

I was appointed to be an Assistant United States Attorney for the District of Columbia from December 6, 1996, to August 14, 2002. I was initially appointed by then-United States Attorney Eric Holder.

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

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

None.

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

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00690 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.617

I served as clerk to Circuit Judge Dorothy W. Nelson of the United States Court of Appeals for the Ninth Circuit from 1990 to 1991.

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

I have not practiced law alone.

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

1991 – 1994
Keker & Van Nest
710 Sansome Street
San Francisco, California 94111
Associate

1995 – 1996
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, NW
Washington, D.C. 20036
Associate

1996 – 2002
United States Attorney's Office for the District of Columbia
555 4th Street, NW
Washington, D.C. 20530
Assistant United States Attorney

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

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

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00691 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.618

b. Describe:

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

In private practice, I was a litigator working on a variety of complex business and some white-collar defense matters. As an Assistant United States Attorney, I prosecuted criminal matters.

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

In private practice, I specialized in First Amendment defamation law and worked on cases for clients such as NBC and The Recorder, a legal newspaper. I also represented other corporate entities, such as insurance companies and banks, in business litigation. As a prosecutor, I specialized in homicide cases.

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

As a lawyer, I have always practiced 100% of my time in litigation and have never done any transactional work. In private practice, I appeared in court occasionally; as a prosecutor, I appeared in court almost every day.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

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

I have tried approximately 40-45 cases to jury verdict. In 90% of the cases I was the lead or sole trial counsel, and in 10% I was associate counsel. I have also tried approximately 25-30 bench trials to verdict. Again, in about 90% of the cases I was the lead or sole trial counsel, and in 10% I was associate counsel.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00692 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.619

i. What percentage of these trials were:
   1. jury: 60%
   2. non-jury: 40%

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

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

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

a. the date of representation;

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

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

Each of the following cases was a homicide jury trial that went to verdict in 2000-2002 in D.C. Superior Court. I was the sole prosecutor in each trial unless a co-counsel is listed. All cases resulted in guilty verdicts.

1. United States v. Mesa, F-1002-01 (Judge Robert Richter). Co-counsel: Jennifer M. Collins, Wake Forest School of Law, 1834 Wake Forest Road; Winston-Salem, NC 27109, 336-758-3852. Defense counsel: Ferris Bond, Box 83699, Gaithersburg, MD 20883, 202-682-4100.

The defendant was a freshman at Gallaudet University, the nation's premier college for the deaf, when he murdered a classmate by beating him to death with a chair. Five months later, he killed another classmate by stabbing him multiple times. Both of these murders occurred in dormitories and led to a state of great anxiety on campus. After the defendant was ultimately caught, his prosecution involved a number of complicated legal issues, including the assertion of the marital privilege by his girlfriend, deaf-interpreter questions surrounding his confession, DNA evidence, and the prior arrest of another suspect. At trial, the defendant ultimately asserted an insanity defense, and several experts testified to

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00693 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.620

his mental state at the time of the crime. In addition, the defendant himself testified and threatened to kill me during my cross-examination of him. After a trial lasting several weeks, he was convicted of both murders and sentenced to life without parole.

2. United States v. Weldon, F-6482-99 (Judge Robert Richter): Defense counsel: Kenny Robinson, 717 D St., NW; 4th Floor; Washington, D.C. 20004, 202-347-5901.

3. United States v. Lewis, F-6780-99 (Judge Lee Satterfield): Co-counsel: Glenn Kirschner, United States Attorney's Office, 555 4th St., NW; Washington, DC 20530, 202-514-7425. Defense counsel: John Copacino, Georgetown Legal Clinic; 111 F St., NW; Washington, D.C. 20001, 202-662-9500.

Defendant Weldon and Lewis hatched a plan to rob an elderly man who was paying them for sex in his house. When the robbery went awry, the two men killed the victim by stabbing him with an array of sharp instruments. The victim lived with his sister, who responded to the commotion by coming downstairs, only to end up being killed as well by near decapitation. Both killers were apprehended and gave statements blaming each other. This required severance of the trials because the statement of each could not be used against the other. Since there were no surviving eyewitnesses, the first trial of Lewis proceeded on circumstantial evidence and his admission of having been present at the scene. After he was convicted by a jury, he was convinced to admit his involvement and testify in Weldon's trial, which he did. Weldon, too, was convicted, and both received substantial prison sentences.

4. United States v. Evans, F-7638-00 (Judge Robert Richter): Defense counsel: Nathan Silver, 6300 Orchid Drive; Bethesda, MD 20817, 301-229-0189.

The defendant, jealous over his wife's friendship with another woman, entered her house and shot both women. While the friend died, the wife miraculously survived a gunshot wound to the head and testified at trial. At trial the significant legal issue involved the admissibility of other crimes evidence -- namely, other incidents of violence by the defendant against his wife. In addition, there were cell-site records and other physical evidence tying the defendant to the murder. After his conviction, he was sentenced to a substantial prison term.

5. United States v. Turner, F-724-98 (Judge Nan Shuker): Co-counsel: Julie Grohovsky, Department of Justice, 950 Pennsylvania Avenue, NW; Washington, DC 20530, 202-514-2000. Defense counsel: Tanya Chutkan, 5301 Wisconsin Avenue, NW; Washington, DC 20015; 202-237-2727.

The defendant in this case was charged with the rape and murder of two women, to whom he had offered crack cocaine and then strangled during sex. The trial was one of the first in the District of Columbia Superior Court to rely primarily on

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00694 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.621

DNA evidence. There were no eyewitnesses to either crime since the defendant had lured homeless women to secluded areas for sex. As a result, the case included various forms of forensic evidence, including DNA, hair and fibers, and medical testimony regarding injuries and cause of death. In addition, another woman whom the defendant had attempted to rape and strangle testified about the defendant's *modus operandi*. The jury convicted the defendant of both murders, and he ultimately decided to forgo an appeal.

6. United States v. Butts, F-1804-00 (Judge Shellie Bowers): Defense counsel: Harold Martin, 1140 Connecticut Ave., NW; Suite 1100; Washington, DC 20036, 202-452-8080.

The defendant, who was an off-duty police sergeant, was driving her car late one night when she struck and killed a homeless man crossing the street. The sergeant was legally intoxicated at the time and was ultimately convicted of involuntary manslaughter. The trial involved an accident-reconstruction expert, as well as testimony regarding the effects of alcohol on a driver's vision and reactions. After conviction, the estranged family of the victim worked with me to craft an appropriate sentence, which the judge ultimately imposed. It required no jail time, but the sergeant lost her job and had to undergo treatment and perform significant alcohol-related community service.

7. United States v. Hager, F-8602-97 (Judge Judith Retchin): Defense counsel: Richard Gilbert, 601 Pennsylvania Avenue, NW; Suite 900 South; Washington, DC 20004, 202-898-0857.

This case involved the retrial of a case that another assistant had previously tried to a hung jury. The defendant, while wearing a mask, had invaded the home of a rival and shot him to death after dragging him from the bed in which he, his wife, and infant were lying. The case involved significant identification issues, which the jury had been unable to resolve in the first trial. In addition, in the retrial, a government witness, falsely attempted to inculpate himself to assist his friend, the defendant. Nonetheless, the jury ultimately convicted the defendant, who then faced the death penalty in Virginia for other murders he had committed there.

8. United States v. Mercer, F-1061-96 (Judge Judith Retchin): Defense counsel: Joseph Conte, 400 7th St., N.W.; Washington, DC 20004, 202-638-4100.

This case also involved the retrial of a case previously tried by another assistant. This time, however, the Court of Appeals had reversed the defendant's conviction because of an error the trial court had made regarding severance. The defendant and a co-defendant, whose conviction had been affirmed, shot a man to death in a dispute between two rival neighborhoods. This case involved a number of hostile witnesses who claimed a lack of memory and were impeached with prior testimony, as well as the cooperation of the co-defendant. In the middle of the trial, the defendant, who was not being held, fled the jurisdiction. The jury

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00695 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.622

convicted him *in absentia*, and he was ultimately found several months later and sentenced to a long prison term.

9. United States v. Donelson, F-1518-00 (Judge Pat Wynn): Defense counsel: Daniel McGuan, deceased.

The defendant here killed another man from the same neighborhood after a trivial dispute. Because the murder occurred in a public housing project, many of the witnesses knew both men and were reluctant to testify or get involved. The case featured important photographic evidence of the scene and other physical evidence that helped to tie the defendant to the murder. He was convicted and, after an unsuccessful motion for a new trial, sentenced to a lengthy term of incarceration.

10. United States v. Tyer, F-1499-00 (Judge Patricia Broderick): Defense counsel: Anna Rodriques, 633 Indiana Avenue, NW; Washington, DC 20004, 202-628-1200.

The police who responded to this case initially thought that the victim had died accidentally during a house fire. They later realized that she had been strangled and that the fire had been intentionally set during a dispute about money and crack cocaine. The case was a sort of closed-house mystery in that 6-7 people (all related or close friends) had all been in the house at the time, no one else had entered or exited, and one or more of the group had to be guilty. Witnesses who had at first sought to protect the defendant, who was the patriarch, subsequently divulged his role, and he was convicted at trial. The case not only featured a closed set of witnesses whom both sides called, but also arson expert testimony. The defendant received a 20-year sentence.

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

I represented the Government in numerous criminal matters that ended in plea dispositions. The most significant was the case of United States v. Jones, in which the defendant ultimately pleaded guilty to having shot several other teenagers in front of the National Zoo on Easter Monday. The case, which I prosecuted with another assistant, received substantial publicity because of the mid-afternoon shooting of students on Connecticut Avenue during a school holiday. The defendant was under 18 at the time, and plea negotiations were sensitive because of the publicity, the number of victims, and the substantial time the Government was seeking. He finally accepted the plea and was sentenced to 25 years' imprisonment.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00696 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.623

I have never performed any lobbying activities.

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

    In the 2003 spring semester, I co-taught a seminar at George Washington University Law School entitled "Anatomy of a Homicide: Advanced Problems in Criminal Procedure" with Jennifer M. Collins, now a law professor at Wake Forest. She can be reached at Wake Forest School of Law, 1834 Wake Forest Road; Winston-Salem, NC 27109, 336-758-3852. We designed the course and taught it together. The course looked at homicide prosecutions in the District of Columbia. A draft syllabus is attached; I believe the final one had some alterations, but neither I nor my co-teacher can locate the final one.

    In the 1989 spring semester, while attending Yale Law School, I taught a seminar at Yale College called "Law and Literature." The class read novels and discussed their depictions of lawyers and courts. I have not retained a syllabus.

    In the academic year 1986-1987, I taught 8th and 9th grade at the Horace Mann School in New York. I taught Ancient and Medieval History to the 8th graders and Modern European History to the 9th graders. No syllabus for this course existed.

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

    None.

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

    I currently coach three youth basketball teams (unpaid). I hope to continue this. In addition, at some point, and consistent with the Code of Judicial Ethics, I may consider teaching as a visiting lecturer at a local law school.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00697 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.624

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        My father, Emanuel Boasberg, III, was for many years the chairman of the D.C. Historic Preservation Review Board. If any matters concerning the Board on which he worked came before me, I would recuse myself. If my former law firm, Kellogg, Huber, Hansen, Todd & Evans, appeared before me, I would inform the parties and recuse myself if any party so requested.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

        I will follow the federal Judicial Code of Conduct in all potential conflicts of interest.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    While working in private practice, I represented a number of clients *pro bono*.

    For example, I acted as an *amicus* for an indigent man named Christopher Small, who had been convicted in California of a felony. I appeared in the trial court in California in an unsuccessful effort to obtain a new trial. Then, after I moved back to Washington, I acted as an *amicus* on his appeal and returned to California to argue in front of the California Court of Appeals, which resulted in the conviction being overturned. I also represented *pro bono* the San Francisco Black

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00698 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.625

Firefighters Association, which was being investigated for fraud, and I was able to get the District Attorney's Office to dismiss the case. In addition, I represented *pro bono* an indigent man accused of property crimes, ultimately obtaining a dismissal of those charges as well.

I co-founded, and have for over 15 years chaired a committee that annually awards, the Class of 1981/Bishop John T. Walker Fellowship. The Fellowship was created to honor Bishop Walker, Washington's first black bishop and a classmate's father. Each year, we award a grant of $2000-5000 to students for social service in a lesser developed area of the world or in the United States. Past winners have worked, *e.g.*, at an AIDS clinic in Africa, an orphanage in India, schools in Haiti and Nicaragua, and an Indian reservation.

As an AUSA I never technically represented any individual because my client was always the United States. Yet, particularly when prosecuting homicides and other violent crimes, I interacted every day with the disadvantaged: family members whose loved ones had been brutally murdered, victims who had been attacked and severely injured themselves, and witnesses who had seen heinous acts, yet who were now terrified of assisting the government lest they themselves be killed. My role was to seek justice on their behalf and to do what I could to assist them in extremely difficult times.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

D.C. Delegate Eleanor Holmes Norton established a 17-person D.C. Judicial Nominations Commission ("JNC") to screen applicants for federal judgeships in the District of Columbia. The JNC invited interested applicants to fill out a lengthy application in the Spring of 2009. I submitted my application in May 2009 and was interviewed by the JNC in June. The JNC then forwarded nine names to Del. Norton, who interviewed those finalists. My interview with her took place on October 13.

I was informed in late November by an official in the Department of Justice's Office of Legal Policy that I was under consideration, and he forwarded me several forms to begin filling out. Since that time I have remained in contact with other pre-nomination officials at OLP. On January 28, 2010, I interviewed at the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00699 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.626

Department of Justice with OLP officials and a member of the White House Counsel's Office. The President submitted my nomination to the Senate on June 17, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00700 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.627

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Beasley, James E.	U.S. District Court, District of Columbia	6/17/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge -- Nominee	☑ Nomination, Date 6/16/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 5/30/2010
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.**	
D.C. Superior Court 500 Indiana Ave., NW Washington, DC 20001	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. Member	St. Albans School Governing Board
2.	
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 12	Name of Person Reporting Bousberg, James E.	Date of Report 6/17/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	D.C. Courts	$72,542.00
2. 2009	D.C. Courts	$174,100.00
3. 2008	D.C. Courts	$174,100.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2010	Alarm.com -- salary
2. 2009	Alarm.com -- salary
3. 2009	Digital Sports -- salary
4. 2009	Self-employed business consultant

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 3 of 12	Name of Person Reporting Bousberg, James E.	Date of Report 6/17/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 12	Name of Person Reporting	Date of Report
	Boasberg, James E.	6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
1. State Street Equity Index Fund - A		None	K	T	Exempt				
2. State Street Equity Index Fund - B		None	L	T					
3. State Street Equity Index Fund - C		None	L	T					
4. Vanguard Institutional Index Fund		None	M	T					
5. Brokerage Account #1									
6. --BRKA		None	M	T					
7. --CSCO		None	L	T					
8. --INTC	B	Dividend	L	T					
9. --LLTC	B	Dividend	K	T					
10. --MDT	A	Dividend	K	T					
11. --MSFT	B	Dividend	L	T					
12. --MCO	B	Dividend	L	T					
13. --PG	B	Dividend	L	T					
14. --WAG	B	Dividend	L	T					
15. --WU	A	Dividend	K	T					
16. --Fidelity US Treasury Money Market	A	Interest	K	T					
17. Brokerage Account #2 (IRA)									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 5 of 12

Name of Person Reporting	Date of Report
Boasberg, James E.	6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
18. --BRKB		None	K	T					
19. --CSCO		None	J	T					
20. --JNJ	B	Dividend	K	T					
21. --LLTC	A	Dividend	J	T					
22. --MSFT	A	Dividend	K	T					
23. --PG	A	Dividend	K	T					
24. --WAG	A	Dividend	K	T					
25. --WU	A	Dividend	J	T					
26. --Fidelity US Treasury Money Market	A	Dividend	K	T					
27. Brokerage Account #3 (IRA)									
28. --BRKA		None	N	T					
29. --BRKB		None	K	T					
30. --CSCO		None	K	T					
31. --JNJ	B	Dividend	L	T					
32. --LLTC	B	Dividend	K	T					
33. --MSFT	A	Dividend	K	T					
34. --PG	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 6 of 12

Name of Person Reporting	Date of Report
Boasberg, James E.	6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date Month - Day	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
35. --WAG	A	Dividend	K	T					
36. --WU	A	Dividend	J	T					
37. --Fidelity US Treasury Money Market	A	Dividend	J	T					
38. Brokerage Account #4 (Trust)									
39. --BRKB		None	K	T					
40. --CSCO		None	K	T					
41. --INTC	A	Dividend	K	T					
42. --JNJ	A	Dividend	J	T					
43. --LLTC	A	Dividend	K	T					
44. --MDT	A	Dividend	J	T					
45. --MSFT	A	Dividend	K	T					
46. --MCO	A	Dividend	J	T					
47. --PG	A	Dividend	K	T					
48. --WAG	A	Dividend	J	T					
49. --WU	A	Dividend	J	T					
50. --Fidelity Municipal Money Market	A	Interest	K	T					
51. Brokerage Account #5 (Trust)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 7 of 12

Name of Person Reporting	Date of Report
Boasberg, James E.	6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 33-40 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (I-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (I-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. --BRKB		None	K	T					
53. --CSCO		None	J	T					
54. --JNJ	A	Dividend	J	T					
55. --LLTC	A	Dividend	J	T					
56. --MDT	A	Dividend	J	T					
57. --MSFT	A	Dividend	K	T					
58. --MCO	A	Dividend	J	T					
59. --PG	A	Dividend	J	T					
60. --WAG	A	Dividend	J	T					
61. --WU	A	Dividend	J	T					
62. --Fidelity Municipal Money Market	A	Interest	J	T					
63. Brokerage Accout #6 (Trust)									
64. --BRKB		None	K	T					
65. --CSCO		None	J	T					
66. --INTC	A	Dividend	J	T					
67. --JNJ	A	Dividend	J	T					
68. --LLTC	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 =More than $1,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 8 of 12	Name of Person Reporting Boasberg, James E.	Date of Report 6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
69. --MDT	A	Dividend	J	T					
70. --MSFT	A	Dividend	J	T					
71. --MCO	A	Dividend	J	T					
72. --PG	A	Dividend	J	T					
73. --WAG	A	Dividend	J	T					
74. --WU	A	Dividend	J	T					
75. --Fidelity Municipal Money Market	A	Interest	J	T					
76. Brokerage Account #7 (Trust)									
77. --BRKB		None	K	T					
78. --CSCO		None	J	T					
79. --JNJ	A	Dividend	J	T					
80. --LLTC	A	Dividend	J	T					
81. --MSFT	A	Dividend	J	T					
82. --MCO	A	Dividend	J	T					
83. --PG	A	Dividend	J	T					
84. --WAG	A	Dividend	J	T					
85. --WU	A	Dividend	J	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 9 of 12

Name of Person Reporting	Date of Report
Boasberg, James E.	6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
86. --Fidelity Municipal Money Market	A	Interest	J	T					
87. Wells Fargo Bank	A	Interest	K	T					
88. Wells Fargo Bank	A	Interest	J	T					
89. Wells Fargo Bank	A	Interest	J	T					
90. Galaxy Desserts		None	J	W					
91. 705 King St. LLC	C	Interest	L	T					
92. Armstrong Equity Partners		None	L	U					
93. DAG, LLC		None	K	U					
94. DAG II, LLC	D	Distribution	L	U					
95. Continental Billiards, LLP	B	Distribution							
96. Buffalo Billiards (PA), LLP	A	Distribution	J	W					
97. Mackey's, LLP	A	Distribution	J	W					
98. Bedrock Billiards, LLP	A	Distribution	J	W					
99. Buffalo Billiards, LLP	D	Distribution	J	W					
100. Carpool, LLP	D	Distribution	K	W					
101. Buffalo Billiards (TN), LLP		None	J	W					
102. Buffalo Billiards (TX), LLP	A	Distribution	J	W					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 10 of 12	Name of Person Reporting Roasberg, James E.	Date of Report 6/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103.									
104.									
105.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 11 of 12	Name of Person Reporting Boasberg, James E.	Date of Report 6/17/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Section VII -- The trusts listed as brokerage accounts 4-7 are trusts for the benefit of my children. I am not the trustee of any of them.

Section VII -- At line 95, my share of Continental Billiards was sold during the reporting period. I no longer own any interest.

FINANCIAL DISCLOSURE REPORT Page 12 of 12	Name of Person Reporting Boasberg, James E.	Date of Report 6/17/2010

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 _____

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

James Boasberg

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		162	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-see schedule	2	092	000	Notes payable to relatives			
Unlisted securities--see schedule		306	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		75	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-personal residence		410	000
Real estate owned- personal residence	1	324	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:							
				Total liabilities		410	000
				Net Worth	3	564	000
Total Assets	3	974	000	Total liabilities and net worth	3	974	000
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	
CSCO	$ 138,959
MSFT	174,150
MCO	89,277
BRKA/B	624,695
WU	35,112
PG	165,000
MDT	64,451
JNJ	151,580
WAG	125,757
INTC	85,680
LLTC	137,004
Vanguard 500 Index	101,000
State Street Equity Index	190,000
Total Listed Securities	$ 2,082,665
Unlisted Securities	
Limited Billiard Partnerships	$ 100,000
Armstrong Equity Partners	99,976
DAG LP Fund I	18,263
DAG LP Fund II	87,786
Total Unlisted Securities	$ 306,025

AFFIDAVIT

I, **JAMES EMANUEL BOASBERG**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 15, 2010
(DATE)

(NAME)

Linda Y. Gray
(NOTARY)
My Commission expires
January 31, 2015

STATEMENT OF AMY BERMAN JACKSON, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Ms. JACKSON. Thank you, Senator. I would first like to thank you and the Committee for considering my nomination and for scheduling this hearing. I would like to thank President Obama for nominating me. It's an extraordinary honor and I will certainly dedicated myself, if confirmed, to living up to the confidence he has placed in me.

I would like to also thank Congresswoman Norton not only for recommending me to the President, but for establishing a commission and a process that enabled anyone to fill out an application and be considered.

I would like to introduce to you family members who are here and mention some who can't be here. It is very humbling to be in this room and realize that it was my grandparents who came here on a boat, all four of them, to this country, with nothing, to escape oppression. They valued education more than anything else and it is through their hard work and their dreams that I sit here today.

They certainly paved the road for me and it—really carpeted, to tell you the truth—and it was their lifelong commitment to service and learning and family that has been instilled in me.

My grandmother, Lena Sauber, who can't be here, is represented by the necklace that I'm wearing. I may be your first nominee to ever introduce her jewelry. But I wear that to remember the woman who came here, learned the language, became a citizen, was a suffragette, raised three daughters, and ran a business, and I know that she is connected to me and watching here today.

With me here today is my mother, Mildred Berman. She is here today and I would say she's always been there. She was the welcoming presence every day when I came home from school to greet me and have the perfect snack and in her house, I grew up blissfully unaware that there was anything that I couldn't do when I grew up as long as I got off the phone and did my homework.

I would like to introduce other members of my family who are here to support me. My cousin, Helen Schlossberg-Cohen, and my father's sister, Rose Abelson.

I'm also supported here today by my husband, Darryl Jackson. We met in the U.S. attorney's office many years ago and we've always both been committed to returning to public service. He was able to do it when President Bush nominated him to an assistant secretary's position, and I'm very thankful that he has agreed that it's my turn, and that he has supported me every step of the way.

I, unfortunately, am not joined today by my two handsome and brilliant sons, David and Matthew. They have recently been delivered to college and so they're unable to be here. But I hope that they're watching the Webcast and if not, I am sure it is because they are studying very hard.

I have been blessed as a lawyer to have the good fortune to only work at places with people I loved and people I admired and respected. My colleagues—many of my colleagues from Trout Cacheris are here. And it's such a small firm, I think I can say that Trout Cacheris is here.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00715 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

I am so honored by the fact that Plato Cacheris and my other partners have all come. But I would like to especially mention Bob Trout and John Richards, who gave me the gift of a lifetime when they asked me to join their small firm. And my partner and friend, Gloria Solomon, who was the first person I told that I planned to fill out the application for Congresswoman Norton and who did not laugh and who has been thrilled and supporting me every step of the way, along with so many of the women that I count among my close friends who are here today, Jennifer Levy, Ruth Kassinger, Maureen Asterbody (ph), Susan Morrow, Melanie Ferrara, and my many friends who I hope have been able to watch.

To conclude, I really want to talk the most about the two people who can't be here today; my late brother, Gordon Berman, and my father, Barnett Berman. I've always been touched by the line in the Memorial Prayer that says you honor your loves ones, your lost relatives, by standing up and pursuing the ideals that they stood for.

My brother stood for using your law degree to pursue justice. And my father was not a lawyer. He was a doctor, but he was one of those old-fashioned kind of physicians who believed that you treat the patient who has the disease and not the disease who has the patient.

He wrote me a letter on my last day of law school and he said to me that it was expected that I would use my law degree and the gifts that he thought I had for something larger than just private concerns. He said, "Of you, more is expected."

I have that letter with me today. I know he is here with me today and I trust that he would say that this is what he had in mind.

Thank you.

Senator DURBIN. Thank you very much.

Judge Shadid.

[The biographical information follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Amy Berman Jackson (maiden name: Amy Sauber Berman)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Columbia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Trout Cacheris, PLLC
   1350 Connecticut Avenue, N.W., Suite 300
   Washington, D.C. 20036

4. **Birthplace**: State year and place of birth.

   1954, Baltimore, Maryland

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1976 – 1979, Harvard Law School; J.D. (*cum laude*), 1979
   1972 – 1976, Harvard College; A.B. (*cum laude*), 1976

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2000 – present
   Trout Cacheris, PLLC
   1350 Connecticut Avenue, N.W., Suite 300
   Washington, D.C. 20036
   Partner

66720.642

1995 – 2000
Family Leave from Law Practice

1986 – 1994
Venable, Baetjer, Howard and Civiletti
575 7th Street, N.W.
Washington, D.C. 20004
Partner (1988 – 1995)
Associate (1986 – 1987)

1980 – 1986
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

1979 – 1980
United States Court of Appeals for the Fourth Circuit
United States Courthouse
101 W. Lombard Street
Baltimore, Maryland 21201
Judicial Law Clerk to the Honorable Harrison L. Winter

Summer 1978
Verner, Liipfert, Bernhard, and McPherson (since dissolved)
Washington, D.C.
Summer Associate

Summer 1977
Frank, Bernstein, Conoway, and Goldman (since dissolved)
Baltimore, Maryland
Summer Associate

Summer 1976
BIC's Ice Cream (since closed)
Cambridge, Massachusetts
Counter Server

Other Affiliations (uncompensated)

2001 – 2003
District of Columbia Spring Valley Restoration Advisory Board
Board Member

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00718 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.643

2001 – 2003
Hebrew Day Institute
2200 Baltimore Road
Rockville, Maryland 20851
Member, Board of Directors

1986 – 1989
D.C. Rape Crisis Center
1625 K Street, N.W.
Washington, D.C. 20006
Member, Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have not registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Superlawyers – Washington, D.C. (2010)
Washingtonian Magazine Top Lawyers (2010)
Department of Justice Special Achievement Awards (1985 & 1986)
Harvard College Dean's List (1973 – 1976)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (ABA)
ABA Criminal Justice Section, White Collar Crime Committee
Co-chair, Department of Justice Liaison Subcommittee (2009 – present)
ABA Section of Litigation
Member, Task Force on Jury Initiatives (1995 – 1998)
Member, Task Force on Children (1993 – 1995)
Co-Director, Division IV: Procedural (1991 – 1992)
Co-Chair, Training the Advocate Committee (1989 – 1991)
Member, Task Force on Training the Advocate (1987 – 1989)
Representative to ABA Steering Committee on Post-Conviction Representation
Member, Complex Crimes Committee
District of Columbia Bar
Judicial Evaluation Committee (1988 – 1991)
Chair (1992 – 1994)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00719 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.644

Elected Delegate to the ABA House of Delegates (1986 – 1989)
District of Columbia Women's Bar Association
Judicial Endorsements Committee (1987 – 1989)
Federal Bar Association
Washington Bar Association
Bar Association of the District of Columbia

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia, 1979
Virginia, 1986

There have been no lapses in either membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1992
United States Court of Appeals for the District of Columbia, 1983
United States Court of Appeals for the Fourth Circuit, 1980
United States Court of Appeals for the Fifth Circuit, 1993
United States District Court for the District of Maryland, 1980
United States District Court for the Eastern District of Virginia, 1986

These are all currently active with the exception of the Fifth Circuit, where I sought admission in connection with a single appeal. There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Assistant United States Attorneys' Association (1985 – 1994 & 2000 – present)
The Barristers (1987 – 1995, approximate)
D.C. Rape Crisis Center Board of Directors (1986 – 1989)
D.C. Spring Valley Restoration Advisory Board (2001 – 2003)
Hebrew Day Institute Board of Directors (2001 – 2003)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00720 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.645

Hexagon, Inc. (1981 – 1986, approximate)
Interdisciplinary Council for Developmental and Learning Disorders
Parents' Steering Committee (1996 – 2001)
Special Olympics Northern Virginia Area 26 Council (1987 – 1989, approximate)

In addition, I have made occasional financial contributions over the years to various charitable organizations. Some of those organizations may have called me a "member" solely by virtue of my financial contribution.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. **Published Writings and Public Statements**:

To respond to the parts of Question 12 set out below, I searched my electronic calendar, the electronic and physical records I have retained of speeches and presentations (including videotape recordings and paper files), copies of applications completed in prior years listing panel presentations, and my memory.

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I searched my memory, my records, and the Internet to provide a list of publications that is as complete as possible, though there may be others I have been unable to identify:

6/6/07: Co-author, letter to the editor of USA Today concerning Congressman William J. Jefferson, from Robert Trout, Amy Berman Jackson, and Gloria B. Solomon. Copy supplied.

03/06: "Defending the Corporation and its Executives: We're Not 'In it Together' Anymore," 12th Annual Federal Procurement Institute, ABA Section of Public Contract Law. Copy supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00721 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.646

11/1/2004: Co-author, op-ed piece in The Legal Times: "Q: Who's Better for Lawyers? A: John Kerry," by Alan I. Baron and Amy Berman Jackson. Copy supplied.

2000: Co-author, "For Parents, By Parents, A Resource Guide." Copy supplied.

4/7/1993: "Bank Fraud: The Institutional Response to a Criminal Investigation," *The Review of Banking and Financial Services*. Copy supplied.

1992: "Cross Examination of an Expert Witness," *The Practical Litigator*, Vol. 3, Number 1, ALI-ABA Jan. 1992. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have searched my memory, my records, and the Internet and have not identified any reports, memoranda, or policy statements that I prepared or to which I contributed. I have no recollection of particular reports from the various task forces and committees on which I have served. To prepare this answer, I consulted with the staff of the ABA Section on Litigation, which did not identify any such reports in the Section's files. To the best of my knowledge, any reports—if they did exist—would have been issued by the Task Force on the Jury, which considered such matters as the need for clear and comprehensible jury instructions, and the Task Force on Children, which focused on the need for legal services for children in the juvenile justice and foster care systems.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not testified or issued an official statement on a matter of public policy or legal interpretation to a public body other than through the submission of legal pleadings in judicial proceedings on behalf of my clients.

Minutes of monthly meetings of the Washington, D.C. Spring Valley Restoration Advisory Board, on which I served as a member, can be found at: http://www.nab.usace.army.mil/projects/WashingtonDC/springvalley/RAB/minutes.htm (last visted June 15, 2010).

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00722 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.647

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not delivered any political or commencement speeches. I appeared on panels at the conferences listed below:

03/06: Ethics and Corporate Criminal Investigations—ABA Section of Public Contract Law Annual Federal Procurement Institute. Notes supplied.

4/22/05: The Boeing Company, Litigation Department. Notes supplied.

1998-2001: I moderated several panels sponsored by the Parents' Steering Committee of the Interdisciplinary Council for Developmental and Learning Disorders at the annual ICDL conference on autism. Video recording of the 1999 panel supplied. I have no other notes, transcript, or recording.

1998: I spoke at the investiture of the Honorable Natalia Combs Greene as a judge on the Superior Court of the District of Columbia. I have no notes, transcript, or recording.

1997: Scientific Fraud—ABA Criminal Justice Section National Institute on White Collar Crime, Fraud. Notes supplied.

1997: Tort Reform—D.C. Judicial Conference. I have no notes, transcript, or recording.

1996: Closing Arguments in a Products Liability Case—ABA Annual Meeting. I have no notes, transcript, or recording.

Late 1990s (I do not recall the specific year): Presentation to Johns Hopkins Medical School students on scientific research fraud as part of the class, "The Physician and Society." Notes supplied.

1994: Parallel Criminal, Administrative, and Civil Proceedings—ABA Litigation Section Annual Meeting. Notes supplied.

1994: Scientific Fraud Investigations—ABA Litigation Section Complex Crimes Committee Federal Enforcement Seminar. My notes for the talk were incorporated into the set of notes for Scientific Fraud: ABA Criminal Justice Section National Institute on White Collar Crime, Fraud: 1997, a copy of which is supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00723 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.648

1993: The Jury's Perspective on Women in the Courtroom—ABA Section of Litigation/Prentice Hall Conference on the Woman Advocate. Video recording supplied.

1993: Responding to a Criminal Investigation, Maryland CPA Association. Notes supplied.

1992: Responding to a Criminal Investigation, National Association of Minority Contractors. I have no notes, transcript, or recording.

1990: Trying an Employment Case—National Employment Law Institute. I have no notes, transcript, or recording.

1990: Cross Examination Workshop—ABA Section of Litigation, ABA Annual Meeting. I have no notes, transcript, or recording.

1988: Training the Advocate—ABA Section of Litigation, ABA Annual Meeting. I have no notes, transcript, or recording.

1987 – 1994 (approx): D.C. Rape Crisis Center Volunteer Training (annual presentation). Notes supplied.

1987 – 1993 "Dollars and Sense: Recent Developments in Government Contracting" —Fraud, Waste and Abuse Investigations, Venable, Baetjer & Howard/George Mason University School of Law (annual presentation). Notes supplied.

Although I searched my memory, my files, and the Internet to prepare as complete a list as possible, I may have given other speeches that I have been unable to identify.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I searched my memory, my files, and the Internet to prepare as complete a list as possible, though I may have given other interviews that I have been unable to identify. Copies of clips from the following interviews are supplied:

11/14/09: Vanguard (Lagos), "Ex-US Congressman Bags 13 Years Jail Term"

6/24/08: Talking Points Memo (Internet Blog), "Did the Feds Really Raid Sweeney's Congressional Office?" at http://tpmmuckraker.talkingpointsmemo.com/2008/06/fbi_told_sweeney_to_preserve_c.php (last visited June 15, 2010)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00724 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.649

12/24/07: Baton Rouge Advocate, "Boy Scouts Watch Trial"

6/30/01: Milwaukee Journal Sentinel, "Browner's Computer Wiped Clean by EPA—Came Same Day Court Had Issued Order"

6/29/01: Associated Press, "Ex-EPA Head Browner Asked for Computer Files to be Deleted"

3/18/89: Richmond Times Dispatch, "Arlington Man Charged in Using Architect's Seals"

7/20/80: William Safire, "On Language"

Between 1995 and 2000, I appeared as an expert legal commentator on television on multiple occasions, explaining legal developments in such cases as the O.J. Simpson trial, the Unabomber attacks, the Whitewater Special Prosecutor investigation, and the investigation into the death of Chandra Levy. I appeared on CNN, MSNBC, Fox News, and local D.C. stations WUSA, WRC, and WTTG, and served as a panelist on CNN's "Burden of Proof." I also appeared on CBN in 1987 discussing date rape. Of those appearances, I have recordings of the following, for which I have supplied copies:

8/28/01: Fox News: Chandra Levy investigation

04/96: Phil Donahue Show: Jury Nullification

2/6/96: WRC-TV (NBC): Discussing O.J. Simpson telephone call to CNN's "Burden of Proof" the day before

10/3/95: WRC-TV (NBC): Simpson verdict

10/2/95: CNN "Burden of Proof:" Awaiting the Simpson verdict (excerpts)

9/13/95: WRC-TV (NBC): "Should O.J. Simpson take the stand?"

8/17/95: WRC-TV (NBC): "What do you think of the lawyers in the O.J. Simpson case?"

9/27/95: WUSA-TV (CBS): O.J. Simpson closing arguments

In addition, transcripts of the following appearances on CNN are available and supplied:

9/24/98: CNN "Upfront Tonight," Judiciary Committee Sets October 8th or 9th As Day On Which To Vote On Whether To Conduct An Impeachment Inquiry

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00725 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.650

9/9/98: CNN "Burden of Proof," Sentencing of Amy Grossberg and Brian Peterson

9/9/98: CNN "Worldview," Circuit Court Rules Promising Leniency for Testimony Illegal

5/31/97: CNN "Burden of Proof," Panel Discussion on the Timothy McVeigh Trial

5/10/97: CNN "Saturday Morning News," Guest Attorneys Review McVeigh Trial For Week Ending May 10, 1997 and Analyze Each Side's Apparent Trial Strategy

1/21/97: CNN "Burden of Proof," Attorneys Prepare For Closing Arguments In the O.J. Simpson Civil Trial

12/12/96: CNN "Burden of Proof," O.J. Simpson Talked To Police; See What He Had To Say

11/25/96: CNN "Inside Politics," O.J. Simpson's Second Day on the Witness Stand

7/31/96: CNN "Burden of Proof," Richard Jewell investigation

6/27/96: CNN "Burden of Proof," O.J. Simpson civil trial

4/9/96: CNN "Burden of Proof," More Evidence in the Unabomber Case

2/5/96: CNN "Burden of Proof," O.J. Simpson case – Simpson telephones

2/5/96: CNN, and O.J. Simpson Special Presentation, Part 2

1/15/96: CNN "Burden of Proof," O.J. Simpson verdict

11/8/95: CNN "Burden of Proof," Oklahoma City bomber case

10/18/95: CNN "Burden of Proof," Death of Selena

10/16/95: CNN "Burden of Proof," O.J. Simpson criminal trial

On December 5, 1985, when I was an Assistant United States Attorney, I appeared before the cameras after obtaining a conviction in *United States v. Paul Jordan*. A copy of the recording is supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00726 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.651

On June 9, 1978, I was a passenger on an Amtrak train that collided and derailed in Seabrook, Maryland, and I was interviewed by television news reporters when I arrived at Penn Station in Baltimore. No recordings are available.

On June 17, 1976 (approx.), the Harvard Crimson published an article by Nicholas Lemann recounting the college experiences of the four roommates in my freshman suite. I was interviewed in connection with the article. I have been unable to locate a copy of the article, including through searches of the Harvard Crimson website and archives.

Between 1974 and 1976 (approx.), while in college, I worked at WHRB-FM, the Harvard College radio station, and produced a bi-weekly interview show on women's affairs called "Accent on Women." No recordings are available, but I was not the subject of the interviews – I was asking the questions.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00727 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.652

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00728 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.653

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a paid or unpaid position in a political party or election committee. I was a member of the Lawyers' Committee for Bill Clinton in 1992, and did a small amount of fundraising in connection with President Barack Obama's election campaign.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

1979 to 1980: After graduating from law school, I served as a law clerk to the Hon. Harrison L. Winter of the United States Court of Appeals for the Fourth Circuit.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1980 – 1986
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

1986 – 1995
Venable, Baetjer, Howard and Civiletti
575 7th Street, N.W.
Washington, D.C. 20004
Associate (1986 – 1988)
Partner (1988 – 1995)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00729 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.654

2000 – present
Trout Cacheris, PLLC
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My law practice has always involved the courtroom. I have handled both civil and criminal cases, and I have seen the criminal law from the perspective of both the prosecution and the defense. My criminal caseload has involved everything from murder and rape on the prosecution side to government contracts fraud, public corruption, and antitrust violations on the defense side. My civil practice has ranged from commercial and real estate related litigation to representing plaintiffs in multi-district tort litigation and victims of sexual assault.

After my clerkship on the Fourth Circuit ended in 1980, I joined the United States Attorney's Office for the District of Columbia. There, it was my responsibility to seek justice on behalf of victims of crime, to advocate for the appropriate punishment for offenders, and to work with citizens and law enforcement in an effort to rid the community of drug trafficking and the violence associated with it.

Since leaving the U.S. Attorney's office in 1986, I have been engaged in the private practice of law. In place of the violent crimes and narcotics offenses I once prosecuted, I have focused on complex white collar matters and civil litigation. As a defense attorney, I have counseled clients when the facts supported a negotiated disposition, and I have also put the government to the test of proving its case in court beyond a reasonable doubt. I have litigated issues involving my clients' constitutional and procedural rights, and I have dealt with evolving investigative techniques such as subpoenas, search warrants, electronic eavesdropping, and undercover sting operations. My practice has also involved the Federal Sentencing Guidelines and their application in plea negotiations, pre-sentence investigations, and sentencing proceedings.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00730 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.655

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The United States Attorney for the District of Columbia has unique responsibility for both local and federal offenses, and for most of my time in the Office, I prosecuted local crimes. I tried approximately 50 cases to verdict before juries in D.C. Superior Court, and moved through the Misdemeanor, Appellate, Grand Jury, Chronic Offender, Felony II Trial, and Felony I Trial sections. In the Appellate section, I briefed and argued appeals in both the U.S. Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals. I spent my last two years as an Assistant United States Attorney (1984-86) in the Felony I Trial section, devoted exclusively to first degree murders, rapes, and sexual assaults on children.

Since 1986, my practice has primarily involved federal litigation. My work at Venable included criminal and civil trials and appeals, with the primary emphasis on white collar criminal investigations. The federal enforcement actions I handled included procurement fraud, antitrust violations, environmental crime, and health care fraud. We represented businesses that were the subjects of grand jury investigations or administrative enforcement actions, and we were called upon to represent individual corporate officers and employees as well. I was involved in the representation of witnesses and targets in the Iran-Contra, Whitewater, and HUD Special Prosecutor investigations. Notable criminal matters included representing an individual charged in the Ill Wind government contracts fraud investigation and the jury trial of an electrical contractor charged with lying to the grand jury during the course of a nationwide bid rigging investigation. I briefed and argued cases in several federal circuits, and served as trial counsel for two military courts martial.

On the civil side, we represented plaintiffs in several cases arising out of airline and train crash disasters, and those representations involved multi-district litigation and federal class actions. Other civil matters included business and real estate disputes and breach of contract actions in both state and federal court, suits on behalf of individual victims of crime, and intellectual property litigation, which entailed seeking temporary restraining orders and injunctions.

My federal litigation practice has continued at Trout Cacheris, where since 2000, I have focused particularly on criminal matters but handled an array of civil cases as well. My cases have involved investigations and charges of bribery, conflict of interest, antitrust, bank fraud, and government contract fraud. In criminal matters, we tend to represent individuals rather than corporations or other entities, but we have handled commercial disputes and employment matters for a number of businesses in D.C., Maryland, and Virginia.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00731 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.656

I served as co-counsel in *United States v. William J. Jefferson,* a public corruption case that was tried to a jury last summer. I have represented individuals involved in the Enron investigation and the Washington Teachers' Union embezzlement matter. Such criminal cases often entail parallel administrative and civil actions growing out of the same sets of facts and circumstances, so my federal practice has also involved Congressional hearings, SEC enforcement actions, bankruptcy proceedings, hearings before other administrative bodies, and civil lawsuits in federal and state court. Other civil litigation matters have included employment discrimination claims, derivative and class action suits alleging securities fraud, breach of contract actions, a products liability case, and legal malpractice, among others. I have continued my representation of victims of crime, and I have been asked to conduct internal investigations by organizations ranging from a law firm to an elementary school. At Trout Cacheris, I have also briefed and argued appeals in the United States Court of Appeals in both criminal and civil cases.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Ninety percent of my time or more has been devoted to litigation. As an Assistant United States Attorney for the District of Columbia from 1980 to 1986, I appeared in court very frequently. Since then, the frequency has varied, but in the aggregate I have appeared in court occasionally. Full-blown trials are less common in private practice than they were when I was a prosecutor, but I have appeared in court regularly for evidentiary hearings, motions practice, sentencing proceedings, and appellate arguments. Due to the nature of our practice, a significant portion of my work has taken place outside the courtroom: federal enforcement matters involve considerable investigation, negotiation, and advocacy with the goal of avoiding trial altogether.

i. Indicate the percentage of your practice in:
   1. federal courts:
   2. state courts of record:
   3. other courts:
   4. administrative agencies:

2005 to present:	federal courts:	85%
	state courts of record:	5%
	other courts:	
	administrative agencies:	10%

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00732 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.657

1986 to 2004:	federal courts:	60%
	state courts of record:	25%
	other courts:	5%
	administrative agencies:	10%
1980 to 1986:	federal courts:	5%
	state courts of record:	95%
	other courts:	
	administrative agencies:	

ii. Indicate the percentage of your practice in:
1. civil proceedings:
2. criminal proceedings:

2005 to present:	civil proceedings:	30%
	criminal proceedings:	70%
1986 – 2004:	civil proceedings:	50%
	criminal proceedings:	50%
1980 – 1986:	civil proceedings:	
	criminal proceedings:	100%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried more than 60 cases to verdict, judgment, or final decision. I was sole counsel in nearly all of these cases, chief counsel in one, and associate counsel in about five.

i. What percentage of these trials were:
1. jury: 90%
2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have filed petitions for certiorari and oppositions to petitions for certiorari. I filed petitions in a death penalty appeal, but I have not yet argued before the Court.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00733 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.658

Copies of the following pleadings are supplied:

2/24/09: *William J. Jefferson v. United States,* No. 08-1059, Petition for writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit
4/24/09: *William J. Jefferson v. United States,* No. 08-1059, Reply to brief in Opposition to Petition for writ of Certiorari

2/19/08: *United States v. Rayburn House Office Building, Room 2113,* No. 07-816, Brief in Opposition to Petition for writ of Certiorari

12/13/04: *Babbitt, et al., v. United States Court of Appeals for the D.C. Circuit,* No. 04-811, Petition for writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit

5/29/92: *Crandon, et. al., v. United States,* No. 91-1908, Petition for writ of certiorari to the U.S. Court of Appeals for the Fourth Circuit

4/30/92: *Bunch v. Thompson,* No. 91-1757, Petition for writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit
6/11/92: *Bunch v. Thompson,* No. 91-1757, Petitioner's Reply Brief
7/22/92: *Bunch v. Thompson,* Petition for Rehearing

1/16/90: *Educational Development Network Corp., and Gerald Kress v. United States,* No. 89-1110, Petition for writ of Certiorari to the U.S. Court of Appeals for the 3rd Circuit

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Representation of Defendant William J. Jefferson in *United States v. Jefferson,* No. 1:07CR209 (E.D. Va.) (T.S. Ellis, III, U.S.D.J.)

I represented the former Congressman from Louisiana, who was charged in June 2007 with bribery, fraud that deprived the citizens of his honest services, conspiracy, RICO,

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00734 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.659

money laundering, and violating the Foreign Corrupt Practices Act. We filed more than 20 pre-trial motions addressing significant legal questions raised by the 95 page indictment. The case did not involve any legislation, appropriations, or earmarks, so one issue for which I bore particular responsibility was whether a Member's use of his access or influence to assist private business ventures abroad could constitute an "official act" of a United States Congressman as that term is defined in the bribery statute. I argued motions to dismiss on those grounds and others. The case presented issues similar to those currently pending before the Supreme Court concerning the scope of the honest services statute, and we filed a motion to suppress arising out of the FBI's decision to take digital photographs of documents that fell outside the scope of the warrant during the execution of a search. In addition, we challenged the government's decision to prosecute in the Eastern District of Virginia a defendant who lived and worked in the District of Columbia.

The Jefferson matter was unusual in that it involved three pre-trial appeals. One concerned whether the prosecution could circumvent a Congressman's invocation of his Fifth Amendment act of production privilege by directing a subpoena for his records to a member of his staff instead. I briefed and argued that appeal. The other two raised novel questions related to the application of the Speech or Debate Clause, the constitutional privilege that protects the legislature against invasion or intimidation by the executive branch. The case involved the first search of a Congressman's office in the history of the United States, and we filed an emergency motion seeking the return of the seized records, arguing that the manner in which the search was conducted violated the Clause. A bipartisan group of Congressional leaders joined our challenge. The District Court upheld the search, but the D.C. Circuit reversed, agreeing with our contention that the method used to conduct the search violated the Constitution. The Supreme Court allowed that ruling to stand. I was the primary drafter of the District Court pleadings and the brief on appeal. We also sought Supreme Court review of an opinion by the Fourth Circuit concerning the power of the court to hear a challenge to an indictment when evidence of legislative activity that was privileged under the Clause had been presented to the grand jury.

The case was as complicated factually as it was legally. More than a dozen of the government's witnesses (of whom there were nearly 50 in total) testified under plea or immunity deals, and the investigation involved an undercover sting operation, hundreds of thousands of documents, and hours of secretly recorded telephone conversations and meetings. It took eight weeks to try the case, and the defendant was convicted of 11 counts and acquitted of five. I played a prominent role in the trial, cross examining about a third of the government's witnesses, including its expert. After sentencing, the court granted our motion for bond pending appeal, finding that the appeal of its rulings on "official acts" raised substantial questions which, if decided in favor of the defense, would result in the reversal of the conviction on every count.

My representation has lasted from 2005 to present. I am counsel of record with co-counsel Robert Trout and Gloria B. Solomon, Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00735 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.660

Principal counsel for the government are AUSA Mark D. Lytle and AUSA Rebeca Bellows, Justin W. Williams U.S. Attorney's Building, 2100 Jamieson Ave., Alexandria, VA 22314, Tel (703) 299-3700; and Charles E. Duross, U.S. Department of Justice, Criminal Division/Fraud Section, 10th & Constitution Ave., NW, Bond Building, 4th Floor, Washington, DC 20530, Tel (202) 514-2000.

Citations:

United States v. Rayburn House Office Building, Room 2113, 497 F.3d 654 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1738 (2008)
In re: Search of the Rayburn House Office Building Room No. 2113, 434 F. Supp.2d 3 (D.D.C. 2006)
United States v. Jefferson, 546 F.3d 300 (4th Cir. 2008), *cert denied* 129 S. Ct. 2383 (2009)
In re Grand Jury Subpoena: John Doe, No. 05GJ1318, 584 F.3d 175 (4th Cir. 2007) (unsealed 2009)
United States v. Jefferson, 615 F. Supp. 2d 448 (E.D. Va. 2009)
United States v. Jefferson, 594 F. Supp. 2d 655 (E.D. Va. 2009)
United States v. Jefferson, 623 F. Supp.2d 678 (E.D. Va. 2009)
United States v. Jefferson, 623 F. Supp.2d 683 (E.D. Va. 2009)
United States v. Jefferson, 571 F. Supp. 2d 696 (E.D. Va. 2008)
United States v. Jefferson, 562 F. Supp. 2d 687 (E.D. Va. 2008), *clarified on denial of reconsideration, United States v. Jefferson*, 634 F. Supp.2d 595 (E.D. Va. 2009)
United States v. Jefferson, 562 F. Supp. 2d 719 (E.D. Va. 2008)
United States v. Jefferson, 562 F. Supp. 2d 695 (E.D. Va. 2008)
United States v. Jefferson, 562 F. Supp. 2d 707 (E.D. Va. 2008)
United States v. Jefferson, 534 F. Supp. 2d 645 (E.D. Va. 2008), *aff'd, United States v. Jefferson*, 546 F.3d 300 (4th Cir. 2008)
United States v. Jefferson, No. 1:07CR209, 2008 WL 780699 (E.D. Va., Mar. 20, 2008)
United States v. Jefferson, No. 1:07CR209, 2009 WL 2447850 (E.D. Va., Aug. 8, 2009)
United States v. Jefferson, No. 1:07CR209, 2009 WL 2447845 (E.D. Va., Aug. 8, 2009)

(2) Representation of an investment banker in Enron-related matters: *SEC v. Merrill Lynch & Co. Inc.*, No. H-03-0946 (S.D. Tex.) and *In Re Enron Corp. Securities, Derivative, and ERISA Litigation*, MDL 1446 (S.D. Tex.) (Melissa Harmon, U.S.D.J.)

Since 2002, I have been co-counsel representing a former Managing Director at Merrill Lynch and head of its Energy and Power Group, who had been involved in several transactions with Enron. We also represented his wife, who is the former Vice President for Corporate Communications at Enron.

Our client retained Trout Cacheris shortly after the fall of Enron in connection with an investigation being conducted by the House Permanent Subcommittee on Investigations into Enron's transactions with a number of investment banks, including Merrill Lynch, and we represented him in the parallel proceedings that ensued: the Department of Justice investigation, the SEC action, a New York Stock exchange investigation, and multiple civil class actions and securities derivative suits filed in federal and state courts.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00736 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.661

The Enron related cases raised the question of whether one party to a financial transaction—in this case, the investment bank—could be held responsible for the other party's failure to account for that transaction properly in its public financial disclosures, and whether the banks owed any duty to Enron's investors which could have been breached. With respect to the individual bankers, the investigations also turned upon the extent to which they relied upon the advice of the bank's in-house lawyers and internal vetting processes. There were factual questions to be considered related to the individuals' level of involvement in the transactions, and whether they had knowledge of the ultimate terms of the deals or how Enron intended to account for them.

My representation has lasted from 2002 to present. I am counsel of record with co-counsel Robert Trout and Gloria B. Solomon, Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Opposing counsel in the criminal matter was Andrew Weissmann (then head of the Enron Task Force), now of Jenner & Block, 919 Third Ave., New York, NY 10022, Tel (212) 891-1650.

Citations:

In re Enron Corp. Sec., Derivative & ERISA Litig., 623 F. Supp. 2d 798 (S.D. Tex. 2009)
In re Enron Corp. Sec., Derivative & ERISA Litig., 610 F. Supp. 2d 600 (S.D. Tex. 2009)
In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732 (S.D. Tex. 2008)
In re Enron Corp. Sec., Derivative & ERISA Litig., 540 F. Supp. 2d 759 (S.D. Tex. 2007)
In re Enron Corp. Sec., Derivative & ERISA Litig., 540 F. Supp. 2d 800 (S.D. Tex. 2007)
In re Enron Corp. Sec., Derivative & ERISA Litig., 491 F. Supp. 2d 690 (S.D. Tex. 2007)
*In re Enron Corp. Sec., Derivative & ERISA Litig.*490 F. Supp. 2d 784 (S.D. Tex. 2007)
In re Enron Corp. Securities, 465 F. Supp. 2d 687 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 463 F. Supp. 2d 628 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 439 F. Supp. 2d 692 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 236 F.R.D. 313 (S.D. Tex. 2006), *rev'd and remanded, Regents of Univ. of Cal. v. Credit Suisse First Boston (USA), Inc.*, 482 F.3d 372 (5th Cir. 2007) (The Court of Appeals overturned the trial court's certification of the class; I worked with counsel for Merrill Lynch in briefing this issue.)
In re Enron Corp. Securities, 529 F. Supp. 2d 644 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 388 F. Supp. 2d 780 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 391 F. Supp. 2d 541 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 229 F.R.D. 126 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 228 F.R.D. 541 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 511 F. Supp. 2d 742 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 314 B.R. 354 (S.D. Tex. 2004)
In re Enron Corp. Sec., Derivative & ERISA Litig., 310 F. Supp. 2d 819 (S.D. Tex. 2004)
In re Enron Corp. Sec., Derivative & ERISA Litig., 284 F. Supp. 2d 511 (S.D. Tex. 2003)
In re Enron Corp. Sec., Derivative & ERISA Litig., 235 F. Supp. 2d 549 (S.D. Tex. 2002)
Newby v. Enron Corp., 188 F. Supp. 2d 684 (S.D. Tex. 2002)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00737 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.662

(3) Representation of Interior Department lawyer in *Cobell v. Norton*, No. 1:96 CV 01285 (D.D.C.) (Royce C. Lamberth, U.S.D.J.)

This class action suit brought concerning the Department of Interior's management of the Indian Trust accounts has been pending since 1996, and it has spawned at least 10 appeals. During 2000 and 2001, attorneys for the plaintiffs asked the court to issue orders to show cause why a number of individual government employees should not be held in contempt in connection with the case. The motions raised issues such as the availability of sovereign immunity and whether any of the named individuals, most of whom were career lawyers from either the Department of Interior or the Department of Justice, had ever been the subject of a specific order that could form the predicate for contempt. Over time, more than 50 individuals were named in contempt motions.

I was the lead lawyer for an attorney who was at that time the Deputy Associate Solicitor General of the Department of Interior. As time wore on, the group of lawyers for the individuals became more organized, and I became one of a handful of attorneys leading the group. When we became aware that the court appointed Monitor had conducted hours of *ex parte* communications with the plaintiffs' attorneys and with the witnesses, and that the court had engaged in over 120 hours of ex parte communications with the Monitor, a group of the named individuals filed a motion seeking the court's recusal from the contempt proceedings. The court denied the motion, *see Cobell v. Norton*, 237 F. Supp.2d 71 (D.D.C. 2003), and the Court of Appeals denied the individuals' petition for a writ of mandamus.

At a later time, on its own motion, the Court of Appeals reassigned the matter to another judge for other reasons. I was selected to speak on behalf of all of the named individuals at the first hearing before the new judge to whom the case was assigned. The court denied all of the pending motions for order to show cause on January 16, 2007.

My representation lasted from 2001 to 2007. I was lead counsel of record with co-counsel John Thorpe Richards, Jr., Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Robert D. Luskin, Patton Boggs, 2550 M Street, N.W., Washington, D.C. 20037, Tel (202) 457-6190; and Dwight Bostwick, Zuckerman, Spaeder, 1800 M Street, N.W., Washington, D.C. 20036, Tel (202) 778 – 1882, represented other individuals named in the contempt motions. Opposing Counsel was Keith Harper, Kirkpatrick Stockton, Suite 900, 607 14th St., N.W., Washington, D.C. 20005, Tel (202) 508 – 5844.

Citations:
Cobell v. Norton, 237 F. Supp.2d 71 (D.D.C. 2003)
In re Brooks, 383 F.3d 1036 (D.C. Cir. 2004), *cert. denied, Babbitt v. United States District Court for the District of Columbia*, 543 U.S. 1150 (2005).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00738 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.663

(4) Representation of The Boeing Company in *Space Technology Development Corp., v. The Boeing Company*, No. 1:05cv411 (E.D. Va.) (Leonie M. Brinkema, U.S.D.J)

Space Technology Development Corp. brought a breach of contract action against Boeing arising out of a letter of intent. We successfully moved to dismiss the matter for failure to state a claim, arguing that the letter was not a contract, but simply an agreement to agree. The trial court's holding was upheld on appeal, and the motion for rehearing was denied. I was the principal counsel at the District Court and on appeal, and I argued the case in the Fourth Circuit on the day after I argued the first Jefferson appeal: *In re Grand Jury Subpoena: John Doe, No. 05GJ1318*, 584 F. 3d 175 (4th Cir. 2007).

My representation lasted from 2005 to 2007. I was lead counsel of record with co-counsel John Thorpe Richards, Jr., Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Opposing Counsel was Jan I. Berlage, Gohn, Hankey & Stichel, LLP, 201 N. Charles Street, Suite 2101, Baltimore, MD 21202, Tel (410) 752-9300.

Space Technology Development Corp., v. The Boeing Company, 209 Fed.Appx. 236, 2006 WL 3612816 (4th. Cir. December 12, 2006).

(5) Representation of the Commonwealth of Virginia in *Commonwealth v. Campbell*, Cr. No. 89-2067-F-08 (Va. Cir. Ct.) (Hon. William W. Sweeney, J.)

In 1989, my partner, William D. Dolan, was appointed by the judges of the Circuit Court for the City of Norfolk to investigate charges that Judge Joseph A. Campbell had altered the traffic court docket to disguise the fact that the Commonwealth's attorney for Virginia Beach—whose driving record was a political issue—had been charged with a traffic offense. Mr. Dolan asked me to co-try the case with him in light of my experience as a prosecutor. We divided the key direct and cross-examinations, and I gave the closing argument.

The case presented a series of factual problems, as a number of the court clerks, concerned about their own involvement, had given inconsistent statements to investigators, and the court's own computer recorded the changes to the docket in a sequence different from that recalled by any witness. Legal questions were raised concerning the requisite intent, double jeopardy concerns, and other issues involved in the jury instructions.

After trial by jury, we obtained the first felony conviction of a sitting judge in the history of the Commonwealth.

My representation lasted from 1989 to 1990. I was counsel of record with co-counsel William D. Dolan, Venable, 8010 Towers Crescent Drive, Suite 300, Vienna, Virginia 22182, Tel (703) 760-1680. Principal opposing counsel were Wayne Lustig (now deceased); William P. Robinson, Jr. (now deceased); and Anthony Troy, Troutman Sanders, 1001 Haxall Point, Richmond, VA 23219, Tel (804) 697-1318.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00739 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.664

(6) Representation of Defendant in *United States v. Mahoney,* No. 88-0216 (D.D.C.) (Oliver Gasch, U.S.D.J.)

This perjury case grew out of a nationwide grand jury investigation of bid rigging in the electrical contracting industry. While represented by other counsel, Mr. Mahoney testified with immunity before the grand jury, and the Antitrust Division alleged that he did not testify truthfully concerning meetings of industry officials. The case was tried to a jury before Judge Gasch in 1988. I cross-examined several immunized witnesses and gave the closing argument. The defendant was convicted; I wrote the brief on appeal and handled the oral argument. The conviction was affirmed.

My representation lasted from approximately 1986 to 1990. I was counsel of record with co-counsel Gerard F. Treanor, Venable, 575 7th Street, N.W.,Washington, D.C. 20004, Tel (202) 344-8115. Opposing Counsel was AUSA Stuart Berman, United States Attorney's Office for the District of Maryland, Southern Division, U.S. Courthouse, 6500 Cherrywood Lane, Greenbelt, MD 20770.

United States v. Mahoney, 893 F. 2d 400 (D.C. Cir. 1990)
United States v. Mahoney, No. 88-0216-OG, 1989 WL 7385 (D.D.C. January 26, 1989)

(7) Representation of Petitioner in *Bunch v. Thompson,* a pro bono death penalty appeal.

Under the leadership of former Attorney General Benjamin R. Civiletti, Venable volunteered to take on a pro bono death penalty appeal, and I was lead counsel on the matter. We handled the federal habeas petition at the U.S. District Court for the Eastern District of Virginia, the Fourth Circuit, and the Supreme Court of the United States, and, with the support of the victim's family, prepared a clemency petition for the governor. When clemency was denied, we filed a second habeas petition, moving up through the Circuit Court of Prince William County, the Virginia Supreme Court, and the entire federal system again. We had no claim of innocence to pursue—the petition was based upon a violation of the defendant's *Miranda* rights that resulted in a confession. In the Fourth Circuit, we obtained a rare dissent from one member of the panel. Ultimately, the appeal was unsuccessful.

My representation lasted from approximately 1990 to 1992. I was lead counsel of record with co-counsel Maria H. Tildon (then at Venable), Carefirst Blue Cross Blue Shield, 10455 Mill Run Circle, Owings Mills, Maryland 21117, Tel (410) 998 – 6001; and Gerard F. Treanor and Karl A. Racine, Venable, 575 7th Street, N.W., Washington, D.C. 20004, Tel (202) 344-8115. Representing the government was John H. McLees, Jr., Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219, Tel (804) 786 – 2071.

Bunch v. Thompson, 949 F.2d 1354 (4th Cir. 1991), *cert. denied,* 505 U.S. 1230 (1992), *reh'g. denied,* 505 U.S. 1244 (1992)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00740 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.665

(8) Representation of Defendant in *United States v. Thomas* – Military court martial, Dover AFB (I have been unable to locate the Case Number, Judge, and opposing counsel)

An Air Force obstetrician, who had only recently completed her medical training, was charged with leaving her post when she left the hospital while a patient—a high ranking officer's wife—was in labor. Dr. Thomas departed the hospital at the end of her lengthy shift only after she had been informed that the physician relieving her was on his way, but the baby was born in the interim. Although there were no complications with the delivery, the doctor faced not only the end of the career she had just begun, but imprisonment for criminal dereliction of duty. We were able to obtain records from the hospital that reflected other officers' practices and used them to cross examine the government's witnesses about the scope of an obstetrician's duty under the circumstances. Our client was acquitted by the court. I handled several witnesses and made the argument to the court at the close of the government's case.

My representation lasted from approximately 1986 to 1988. I was counsel of record with co-counsel Gerard F. Treanor, Venable, 575 7th Street, N.W., Washington, D.C. 20004, Tel (202) 344-8115.

(9) Representation of the United States in *United States v. Jordan,* Crim. No. F-1164-85 (D.C. Sup. Ct.) (Hon. Eugene M. Hamilton, J.)

Defendant Jordan was charged with two counts of first degree murder arising out of the deaths of the 3-year-old child of two D.C. police officers and her babysitter. The case raised difficult questions surrounding the admissibility of a confession and presented numerous issues arising out of the presence—or absence—of forensic evidence.

Mr. Jordan, an alcoholic, was questioned by Metropolitan Police officers. Since he was not in custody at the time the interview began, he was generally advised of his right to remain silent and his right to counsel, but the complete set of *Miranda* warnings was not read. Under questioning, he confessed to killing the babysitter and molesting and killing the child. After he had confessed and provided the officers with considerable detail that only the murderer would know, he was placed under arrest, and a formal *Miranda* waiver was executed.

As his stay at the police station wore on, Mr. Jordan began to exhibit signs of alcohol withdrawal. After his arrest, he agreed to be questioned again on videotape. By then, the withdrawal symptoms had worsened, and the physical effects of his illness were evident on the tape. Also, Mr. Jordan omitted or confused many of the details in the videotaped version of the interview. Thus, both the lengthy pre-trial hearings and the trial entailed considerable psychiatric testimony and legal argument as the defendant challenged the voluntariness of his confession and also sought to suppress it under *Miranda v. Arizona.*

The defendant was tied to the scene by several carpet fibers present on his clothing the day he was arrested, three weeks after the murders. However, his fingerprints were not among those found, and his blood, semen, and saliva were not found on the premises or

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00741 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.666

on the victim's clothing. The trial therefore also involved dueling experts in each of these fields of forensic science.

After the defendant was convicted of two counts of first degree murder, the Washington Post reported: "The jury had deliberated 15 hours over three days in the case that had produced some of the most emotional moments, hard-fought courtroom legal battles, and unusual legal twists in recent memory at D.C. Superior Court." I was sole counsel on every aspect of the matter, including a mid-trial emergency appeal.

My representation took place in 1985. I was the sole prosecutor assigned to the case. Defense counsel was James McComas (then Chief, Felony Trial Division, D.C. Public Defender Service), P.O. Box 227, Park Falls, WI 54552, Tel (715) 583-2269.

(10) Representation of the United States in *United States v. King* (I have been unable to locate the Case Number) (D.C. Sup. Ct.) (Joseph M.F. Ryan, J.)

This was a retrial after a hung jury when the case was first tried by another prosecutor. The defendant was charged with second degree murder and assault with intent to kill while armed for an attack on his grandparents that resulted in his grandfather's death and severe injuries to his grandmother. This time, he was convicted.

My representation took place in 1984. I was the sole prosecutor assigned to the case. Defense counsel was Michele D. Roberts (then at the D.C. Public Defender Service), Akin Gump Strauss Hauer & Feld, PLLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036, Tel (202) 887-4306.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not engaged in any lobbying activities.

2010: On March 5, the D.C. City Council retained Trout Cacheris to assist in its investigation of alleged irregularities surrounding the award of over 80 million dollars' worth of contracts to individuals associated with the Mayor. This matter has just begun, but we will be reviewing the results of the Special Committee's investigation to date, assisting in taking additional testimony, and providing our independent analysis. This is a pro bono representation.

2008: Representation of Defendant Taneja in *United States v. Taneja.* Mr. Taneja came to Trout Cacheris when his mortgage company was sued civilly by Wells Fargo in April of 2008. The pleadings alleged a complicated mortgage fraud scheme, and we initiated

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00742 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.667

contact with the United States Attorney's Office to negotiate a resolution of the criminal prosecution that we anticipated would ensue. In the meantime, Mr. Taneja filed for bankruptcy. At the time of Mr. Taneja's plea to a $50 million dollar scheme, the U.S. Attorney's Office for the Eastern District of Virginia announced that his was the largest bank fraud case in the history of the Office. I was co-counsel on this matter but undertook primary responsibility for preparing Mr. Taneja for and facilitating the multiple debriefing sessions with the Department of Justice, as well as interacting with the large and contentious group of attorneys for the many creditors. The representation involved extensive negotiations over the terms of the plea agreement and the preparation of sentencing memoranda. Mr. Taneja was sentenced to a term of seven years. The extent of the fraud, and the difficulties involved in defending a mortgage fraud case during a time of great public interest in the role of mortgage market in the collapse of the economy made this a significant matter.

2007 – present: Representation of the head of world wide sales and marketing for the cargo division of a Chilean airline in an international criminal antitrust investigation involving fuel surcharges. The investigation is ongoing, and I have had no contact with the prosecutor to date.

2006 – 2008: Representation of an industrial chemical company salesperson who was the target of a bribery investigation into her company's use of awards for volume purchases. The representation involved many meetings with the client to ascertain the facts, debriefing sessions with the prosecutors, and finally, a presentation in which we successfully urged the government to decline prosecution.

2006: Internal investigation: I had primary responsibility for a sensitive internal investigation at a major law firm looking into an employment dispute with a former partner. I interviewed a number of attorneys at the firm, reviewed emails and other documents, and reported our findings to the firm's general counsel and other members of the management team.

2005: Representation of Defendant in *United States v. Bedewi*. Dr. Bedewi, an internationally renowned engineering professor at George Washington University, was alleged to have overcharged the U.S. government more than $700,000 on research contracts with the Department of Transportation. The matter resulted in a guilty plea and period of incarceration as well as a civil settlement of the false claims. I was involved in amassing and understanding the financial data, negotiating the terms of the plea and settlement, and preparing a sentencing memorandum.

2003 – 2004: Representation of the president of an industrial coal company in a criminal antitrust investigation: Our client was initially identified as a target of the criminal investigation, but he eventually testified before the grand jury and his testimony helped persuade the Antitrust Division that the matter did not warrant criminal prosecution.

2002 – 2005: Representation related to the embezzlement of funds from the Washington Teacher's Union by Barbara Bullock: I represented Ms. Bullock's sister, who had been a recipient of many of the ill-gotten luxury items, and our engagement began when the FBI

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00743 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.668

executed a search warrant at her home. My client cooperated with the federal investigation, and ultimately, the government did not bring charges against her. I also represented Ms. Bullock's sister in the parallel civil actions that were joined in *American Federation of Teachers v. Bullock*, No. 03-CV-79 (D.D.C.)

2001 – 2003: Representation of Plaintiff in Baycol MDL: We represented an individual in an action against Bayer, A.G., the manufacturer of the cholesterol lowering drug Baycol. Baycol was removed from the market in August 2001 due to reports of rhabdomyolysis, a severe and often fatal adverse reaction. Rhabdomyolysis involves muscle cell breakdown, which can lead to renal failure and other organ failure when the contents of the muscle cells enter the bloodstream. Elderly patients, especially those also taking another lipid lowering drug, were most susceptible to fatal rhabdomyolysis reactions. Our client began experiencing muscle weakness shortly after she began taking the medication, and her condition rapidly deteriorated. She reached the point where she could not move her arms and legs, and her muscle weakness compromised her ability to breathe, swallow, and open her eyes. She was close to death when her treating physicians recognized what was causing the problem. Our complaint was joined with others in the Baycol multi-district litigation, and the matter resulted in a negotiated settlement.

2001 – 2003: Representation of Carol Browner, the former Administrator of the U.S. Environmental Protection Agency: We represented Ms. Browner in connection with contempt proceedings in *Landmark Legal Foundation v. Environmental Protection Agency*, 272 F. Supp.2d 70 (D.D.C. 2003). In 2000, the plaintiffs brought a Freedom of Information Act action seeking agency records concerning certain proposed regulations. On January 19, 2001, the eve of the change in administrations, the plaintiffs sought an order from the court barring the destruction of any responsive records. The court issued the order, but on that same date, Ms. Browner requested that her hard drive be reformatted and wiped clean in anticipation of the transition. Ms. Browner did not have notice of the court's order at the time, and she did not utilize email during her term as EPA Administrator in any event. Based upon those facts, the court denied the plaintiffs' motion to hold Ms. Browner in contempt personally although it granted the motion for sanctions against the agency.

1992 – 1994 (approx): Representation of a doctor and his wife who were passengers on USAir flight 405: In March 1992, a plane leaving LaGuardia for Cleveland attempted to take off even though too much time had elapsed after the wings had last undergone de-icing. Our clients survived the crash that plunged the plane into Flushing Bay, but they were badly injured. The wife was one of the most seriously injured passengers not killed in the crash, and she underwent multiple operations to repair the damage to her legs. The husband sustained a shoulder injury. While the passengers were struggling to get out of the frigid waters, the fuel on the surface ignited, and both of our clients also suffered burns which required them to endure excruciating burn treatment. The passengers' cases were consolidated in the multi-district litigation for proceedings on the availability of punitive damages, but the cases were handled individually for purposes of compensatory damages. Our case raised particularly complicated and interesting valuation issues. The couple was quite wealthy, and the husband was eventually able to return to his radiology

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00744 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.669

practice, but his economic success had come from his entrepreneurial energy and creativity, which were severely dampened by the emotional effects of the crash. The wife did not lose any income, but she had been a dancer and tennis player, and her legs were permanently damaged. The matter was resolved after protracted negotiations.

1988 – 1992: Representation of Dr. Baltimore: I participated in Venable's representation of a Nobel prize winning biologist in connection with allegations of fraud in scientific research reported in an article which he co-authored. While Dr. Baltimore personally was not alleged to have engaged in any wrongdoing, he became the public face of the case due to his vociferous defense of his colleague, Dr. Imanishi-Kari. The matter was significant because it involved monitoring parallel Congressional, administrative, and criminal proceedings, as well as managing the many consequences of the publicity surrounding the charges. The Congressional committee investigating the matter brought in document examiners from the U.S. Secret Service, who performed an ink and paper analysis and accused Dr. Imanishi-Kari of falsifying data. The U.S. Attorney's office ultimately concluded that the Secret Service's analysis was flawed and unreliable, and no criminal charges were brought.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Intensive Session in Trial Advocacy Skills: Georgetown Law Center/D.C. Bar CLE,
Team Member—2007, 2002, 1998, 1985 – 1990
Team Leader—1991-1993

National Institute for Trial Advocacy:
Washington, D.C. (Advanced Advocates Program) 2009
Gainesville, FL (Advanced Program) 1988
Lawrence, KS 1988—1989
Boulder, CO 1987
NITA Teacher Training Program

Harvard Law School – Instructor, Trial Advocacy Workshop 1984—1992
Emory Law School – Instructor, Trial Advocacy Workshop 1990
University of Texas – Instructor, Trial Advocacy Workshop 1989

I did not use syllabi in teaching these courses and so I have none to supply.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00745 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.670

I do not expect to derive any income from any deferred income arrangements. I have a pension plan at Trout Cacheris, which I would roll over into an individual IRA if I am confirmed. My capital investment in the firm would be returned to me pursuant to the firm's Operating Agreement.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I do not have plans to pursue outside employment during my service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       If confirmed, I would recuse myself from any matter in which a party is represented by Trout Cacheris (my current law firm) or Kelley Drye (where my husband is a partner).

       At present, my husband and I own stock in a number of public companies. If confirmed, I will follow the guidance of the Administrative Office of U.S. Courts and of the District Court in undertaking any appropriate reinvestment into diversified funds. If I continue to own any individual stocks, I would recuse myself from any cases in which I have investments.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       I would handle all matters involving potential conflicts of interest through careful adherence to the Code of Conduct for United States Judges as well as other

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00746 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.671

relevant Canons and statutory provisions, seeking to avoid not only actual conflicts of interest, but the appearance of any conflict. I would seek the advice of the Chief Judge and other more experienced jurists on the court if I was uncertain about what to do, and in close questions, I would err on the side of caution.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

At Trout Cacheris, I have worked on several matters for the non-profit organization, Food & Friends (approximately 25 hours). In 2005, I was retained by a small elementary school to look into allegations of inappropriate conduct by a teacher. The matter required great sensitivity in balancing the needs and sometimes conflicting views and concerns of the school students, their parents, the rest of the faculty, the school, and the teacher involved. This pro bono representation involved more than 30 hours of time. I currently represent a public charter school at a substantially reduced hourly rate (115 hours to date), and I also represented a group of young Bowie State College students in a small pro bono matter (25 hours).

On March 5, 2010, a Special Committee of the D.C. City Council engaged my partner, Robert Trout, and Trout Cacheris on a pro bono basis to assist it in its investigation of alleged irregularities surrounding the award of over 80 million dollars' worth of contracts to individuals associated with the Mayor. I am assisting in this effort. We have been reviewing the results of the Special Committee's investigation to date, assisting in taking additional testimony, and providing our independent analysis, and I have expended more than 150 hours on this matter to date. The work is likely to continue to occupy a substantial portion of my time for the next several months.

I also supervised and participated in a number of pro bono matters at Venable. In particular, I served as lead counsel when Venable undertook the pro bono representation of an indigent individual sentenced to death in Virginia. We pursued federal habeas relief at the U.S. District Court for the Eastern District of Virginia, the Fourth Circuit, and the U.S. Supreme Court, and prepared a clemency petition for the governor. When clemency was denied, we filed a second habeas petition, moving through the state system—the Circuit Court of Prince William County and Virginia Supreme Court—and the entire federal system again. Over the course of the representation, I personally spent more than 250 hours on the matter.

Also, I edited and supervised work on an amicus brief that Venable attorneys drafted pro bono for the Women's Legal Defense Fund, on the question of whether the prior sexual history of the victim of sexual misconduct by a doctor should be admissible in a professional disciplinary proceeding.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00747 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.672

From 1996 to 2001, I served as a member of the Parents Steering Committee for the Interdisciplinary Council for Learning and Communication Disorders, creating written materials and panel presentations for parents of children with autism.

Finally, when I left the U.S. Attorney's office in 1986, I volunteered to serve a three-year term as a Board member for the D.C. Rape Crisis Center in an effort to continue my work on behalf of victims of crime. After my term ended, I assisted by training volunteers three times a year and taking many calls at no charge informing RCC counselors and clients about their legal rights and obligations. I devoted at least 200 hours to Rape Crisis Center matters.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On May 15, 2009, I submitted an application to Congresswoman Eleanor Holmes Norton's District of Columbia Nominating Commission in response to the Commission's public solicitation of applications for the three vacancies on the court. I was interviewed by the Commission on July 3, 2009. The Commission recommended me to the Congresswoman, and she interviewed me on October 8, 2009. The Congresswoman then submitted my name, along with others, to the White House. In early November 2009, I updated my application to the Commission in connection with its announcement of the fourth vacancy on the court. I appeared before the Commission again on January 4, 2010.

Since March 7, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on April 13, 2010. On June 17, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00748 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.673

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jackson, Amy B.	United States District Court for the District of Columbia	06/17/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge - nominee	☑ Nomination. Date 6/17/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 05/31/2010
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.**	
1350 Connecticut Avenue Suite 300 Washington, D.C. 20036	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. Member	Trout Cacheris, PLLC
2. Personal Representative	Estate A
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. May 2008	Trout Cacheris Amended and Restated Operating Agreement provides for the payout of a withdrawing Member's Capital Account over a three year period. (no control)
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2008	Trout Cacheris (law firm partnership income)	$286,758.00
2. 2009	Trout Cacheris (law firm partnership income)	$212,000.00
3. 2010	Trout Cacheris (law firm partnership income)	$59,364.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2009	U.S. Department of Commerce (salary)
2. 2009	Kelley Drye, LLP (law firm partnership income)
3. 2010	Kelley Drye, LLP (law firm partnership income)
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT Page 3 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Clark University	College tuition 2009 - 10	K
2. Georgetown Day School	Tuition 2009 - 10	K
3. The New School of Northern Virginia	Tuition 2008 - 09	K
4. Georgetown Day School	Tuition 2008 - 09	K
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. Chevy Chase Bank Accounts	A	Interest	K	T	Exempt				
2. Chevy Chase Young Savers Accounts	A	Interest	J	T					
3. CD Chevy Chase, 13 month	A	Interest	J	T					
4. CD Chevy Chase, 13 month	A	Interest	J	T					
5. Trout Cacheris Capital Account		None	M	T					
6. FBGTZ	A	Dividend	K	T					
7. GRSPX	B	Distribution	K	T					
8. LCORX	A	Dividend	K	T					
9. MALOX	A	Distribution	K	T					
10. TFSMX	A	Dividend	K	T					
11. BPTRX		None	K	T					
12. FAIRX	A	Dividend	K	T					
13. VFIIX	A	Dividend							
14. TGBAX	A	Dividend	K	T					
15. IVAEX	A	Dividend	K	T					
16. GHAAX		None	K	T					
17. SGENX	A	Dividend	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	D =$2,501 - $5,000 G =$100,001 - $1,000,000	C =$5,001 - $15,000 H1 =$1,000,001 - $5,000,000	D =$15,001 - $50,000 H2 =More than $5,000,000	E =$50,001 - $100,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P1 =$1,000,001 - $5,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P2 =$5,000,001 - $25,000,000	M =$100,001 - $250,000 P3 =$25,000,001 - $50,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 5 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
18. JSTIX		None	K	T					
19. TGLMX	A	Dividend	K	T					
20. RYOTX		None	J	T					
21. BRF	A	Dividend	J	T					
22. RSG	A	Dividend	J	T					
23. HPQ	A	Dividend	J	T					
24. CVX	A	Dividend							
25. GAM+B	A	Dividend	J	T					
26. RVT+B	A	Dividend	J	T					
27. VZ	A	Dividend							
28. ODVYX		None	J	T					
29. MACSX		None	J	T					
30. MSFT	A	Dividend	J	T					
31. GHAIX		None	J	T					
32. PM	A	Dividend	J	T					
33. COP	A	Dividend	J	T					
34. D	A	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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 6 of 15

Name of Person Reporting	Date of Report
Jackson, Amy B.	06/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date Month - Day	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
35. DO	A	Dividend							
36. EXPD	A	Dividend	J	T					
37. EXC	A	Dividend							
38. FPL	A	Dividend							
39. TTRZX	A	Dividend	J	T					
40. VGSDX	A	Dividend	K	T					
41. AMB-L	A	Dividend							
42. CGMFX	A	Dividend							
43. CSX	A	Dividend							
44. EMR	A	Dividend							
45. OEF	A	Dividend							
46. VTI	A	Dividend							
47. PHO	A	Dividend							
48. FCVSX	A	Dividend							
49 GTEYZ	A	Dividend							
50. LAALX	A	Dividend							
51 PCRLX	B	Dividend							

1. Income Gain Codes (See Columns D1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

66720.679

FINANCIAL DISCLOSURE REPORT Page 7 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
52. POT	A	Dividend							
53. TROW	A	Dividend							
54 FMIEX	A	Dividend							
55. TYG	A	Dividend							
56. JPM-Z	A	Interest							
57. BWF	A	Interest							
58. PNH	A	Interest							
59. MFLDX		None	K	T					
60. PRGFX	A	Dividend	L	T					
61. PRFDX	B	Dividend	L	T					
62. PRWCX	B	Dividend	L	T					
63. PBDIX	B	Dividend	K	T					
64. PTRAX	C	Distribution	L	T					
65. PRRXX	A	Dividend	L	T					
66 Schwab Money Market Fund	A	Interest	J	T					
67 Merrill Lynch Bank Deposit Program	A	Interest	K	T					
68. ISA Wilmington SFS FSB	A	Interest	J	T					

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 8 of 15

Name of Person Reporting	Date of Report
Jackson, Amy B.	06/17/2010

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (Includes those of spouse and dependent children; see pp. 31-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. Income during reporting period: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. Gross value at end of reporting period: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period: (2) Date Month - Day	D. Transactions during reporting period: (3) Value Code 2 (J-P)	D. Transactions during reporting period: (4) Gain Code 1 (A-H)	D. Transactions during reporting period: (5) Identity of buyer/seller (if private transaction)
69. AAPL		None	K	T					
70. BAC	A	Dividend	J	T					
71. BMY	A	Dividend	J	T					
72. CSCO		None	J	T					
73. CMI	A	Dividend	K	T					
74. DIS	A	Dividend	J	T					
75. EMC		None	J	T					
76. GE	A	Dividend	J	T					
77. GOOG		None	J	T					
78. HPQ	A	Dividend	J	T					
79. HD	A	Dividend	J	T					
80. MHS		None	J	T					
81. MRK	A	Dividend	J	T					
82. MDT	A	Dividend	J	T					
83. NOK	A	Dividend	J	T					
84. PG	A	Dividend	K	T					
85. XLU	A	Dividend	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	D =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 9 of 15

Name of Person Reporting	Date of Report
Jackson, Amy B.	06/17/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (3) Value Code 2 (J-P)	C. (4) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (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)
86. TGT	A	Dividend	J	T					
87. TWX	A	Dividend	J	T					
88. UPS	A	Dividend	K	T					
89. IAXX - FIA CARD SVS NA RASP MONEY MKT	A	Interest	J	T					
90. MLRAX - Ready Assets Prime Money Market	A	Interest	J	T					
91. FERCX		None	J	T					
92. FBTCX		None	J	T					
93. BWLCX	A	Dividend	J	T					
94. BACPRC	A	Dividend	J	T					
95. REC17A		None	K	T					
96. MDFGX	A	Dividend	J	T					
97. DEGCX		None	J	T					
98. ECHSX		None	J	T					
99. FAVCX		None	J	T					
100. Ameriprise	A	Dividend							
101. BA	A	Dividend	J	T					
102. CAT	A	Dividend	J	T					

1. Income Gain Codes (See Columns D1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 10 of 15

Name of Person Reporting	Date of Report
Jackson, Amy B.	06/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
103. COV	A	Dividend							
104. KO	A	Dividend	J	T					
105. JNJ	A	Dividend	K	T					
106. ORCC		None	J	T					
107. PRU	A	Dividend	J	T					
108. PEP	A	Dividend	J	T					
109. VZ	A	Dividend	J	T					
110. BRKB		None	J	T					
111. BRECX	A	Dividend	J	T					
112. RDSA	A	Dividend	J	T					
113. Tyco	A	Dividend							
114. CD American Express	A	Interest							
115. CD Wilmington	A	Interest							
116. KO	A	Dividend							
117. PG	B	Dividend							
118. FADCY	A	Dividend							
119. CD Superior Bank	A	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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 11 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 11-60 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D (2) Date 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)
120. CD Bank of America	A	Dividend							
121. CD Wilmington	A	Dividend							
122. CD American Express	A	Dividend							
123. CD Wilmington	A	Dividend							
124. CD SUPERIOR BANK BIRMINGHAM, A L 00.550% JUN 23 2010	A	Interest	J	T					
125. CD BANK OF AMERICA NA CHARLOTTE, NC 00.900% SEP 30 2010	A	Interest	J	T					
126. CD Beal Bank, SSB.300%, Oct 13 2010	A	Interest	K	T					
127. CD Johnson Bank 1.250% Jan 7 2010	A	Interest	K	T					
128. COP	A	Dividend							
129. DIS	A	Dividend							
130. GE	A	Dividend							
131. CWGCX	A	Dividend							
132. INTL	A	Dividend							
133. TROW	A	Dividend							
134. T	A	Dividend							
135. C	A	Dividend							
136. PFE	A	Dividend							

1 Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$5,000,001 - $25,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000 P4 =More than $25,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 12 of 15

Name of Person Reporting	Date of Report
Jackson, Amy B.	08/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
137. CD SUPERIOR BANK BIRMINGHAM, A L 00.550% JUN 23 2010	A	Interest	K	T					
138. CD BANK OF AMERICA NA CHARL OTTE, NC 00.250% JUNE 16 2010	A	Interest	K	T					
139. CD BANK OF AMERICA NA CHARL OTTE, NC 00.900% SEP 30 2010	A	Interest	J	T					
140. CD Beal Bank Nevada .300% Oct 13 2010	A	Interest	K	T					
141. DD	A	Dividend	J	T					
142. EMC		None	J	T					
143. PG	A	Dividend	J	T					
144. Motorola	A	Dividend							
145. MCLOX	A	Dividend	K	T					
146. MDFGX	A	Dividend	J	T					
147. FNICX		None	K	T					
148. CSTGX	A	Dividend	J	T					
149. FDGRX	A	Int./Div.	J	T					
150. FSMAX	A	Int./Div.	J	T					
151. FFFDX	A	Int./Div.	K	T					
152. FBIDX	A	Int./Div.	J	T					
153. FID MGD INC PORT	A	Int./Div.	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 13 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
154. DC College Savings Plan 529 Account -A		None	K	T					
155. DC College Savings Plan 529 Account - B		None	K	T					
156. State of Israel Bonds	C	Interest	L	T					
157. Wachovia Bank - joint account with parent	C	Interest	M	T					
158. ASSETS IN ESTATE A.									
159. Cash in Schwab account	A	Interest	J	T					
160. Fed Home Ln Mtg Corp; Mat:5/15/2024	C	Interest	L	T					
161. GMAC BK Midvale Utah; Mat: 2/25/2011	A	Interest	L	T					
162. Sallie Mae BK Murray Utah; Mat:8/13/2009	B	Interest	K	T					
163. Schwab Charles Family FD	A	Dividend	M	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Est. (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 14 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

With respect to the assets in Estate A, for which I am personal representative, listed in Part VII, Investments and Trusts, lines 159 - 163, the income figures reflect only the period for which I was personal representative: September 2009 to May 31, 2010 -- and not the period from January through August 2009, when the deceased was still alive and I had no control over or beneficial interest in the assets.

FINANCIAL DISCLOSURE REPORT Page 15 of 15	Name of Person Reporting Jackson, Amy B.	Date of Report 06/17/2010

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 Amy B. Jackson

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

Amy Jackson

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		186	430	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		2	000	Notes payable to banks-unsecured			
Listed securities-see schedule	1	329	077	Notes payable to relatives			
Unlisted securities--see schedule		146	176	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		15	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgage-- personal residence		468	148
Real estate owned--see schedule	1	730	600	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		27	600				
Cash value-life insurance							
Other assets itemize:							
State of Israel Bonds		55	351				
529 Accounts		83	965				
Trout Cacheris capital account and undistributed 2009 earnings		147	420	Total liabilities		483	148
Account owned jointly with parent		111	165	Net Worth	3	336	636
Total Assets	3	819	784	Total liabilities and net worth	3	819	784
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		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AAPL	$25,688
BA	6,418
BAC	1,574
BACPRC	1,113
BMY	2,321
BRECX	10,343
BRKB	14,110
CAT	12,152
CMI	27,192
CSCO	2,895
CSTGX	3,337
DD	3,002
DIS	6,684
ECHSX	5,212
EMC	10,985
FAVCX	4,867
FBTCX	4,856
FERCX	6,660
FNICX	16,276
GE	2,043
GOOG	14,568
HD	5,079
HPQ	9,202
HWLCX	7,135
JNJ	18,947
KO	7,710
MCLOX	18,306
MDFGX	11,040
MDT	5,877
MHS	1,383
MLRAX	5,322
MRK	3,369
NOK	6,072
OEGCX	9,763
ORCC	2,155
PEP	12,578
PG	36,043
PRU	11,542
RDSA	5,606
RFC17A	36,386
TGT	9,542

TWX	1,239
UPS	19,769
VZ	2,807
XLU	18,981
FPC1Z	44,010
GRSPX	42,759
LCORX	30,169
MALOX	30,094
TFSMX	25,181
BPTRX	24,044
FAIRX	23,113
VSGBX	17,618
TTRZX	10,499
MFLDX	25,518
VFIIX	21,933
TGBAX	20,697
IVAEX	28,278
GHAAX	15,084
SGENX	15,251
ISTIX	19,766
TGLMX	23,905
RYOTX	12,335
BRF	10,660
RSG	10,920
HPQ	6,902
GAM+B	7,518
RVTPR+B	7,503
ODVYX	6,988
MACSX	6,982
MSFT	5,160
GHAIX	12,363
PM	4,412
COP	5,186
EXPD	4,780
PRGFX	85,067
PRFDX	90,464
PRWCX	64,181
PBDIX	33,890
PTRAX	53,518
FDGRX	4,585
FFFDX	15,950
FSMAX	4,469
FBIDX	5,537
FID MGD INC PORT	3,627
Total Listed Securities	$1,329,065

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00765 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.690

Unlisted Securities	
CD JOHNSON BANK 1.250% JUN 07 2010	$25,000
CD SUPERIOR BANK BIRMINGHAM, AL 00.550% JUNE 23 2010	9,996
CD SUPERIOR BANK BIRMINGHAM, AL 00.550% JUN 23 2010	19,992
CD BANK OF AMERICA 2.50% JUN 16 2010	19,992
CD BANK OF AMERICA NA CHARLOTTE, NC 00.900% SEP 30 2010	4,994
CD BANK OF AMERICA NA CHARLOTTE, NC 00.900% SEP 30 2010	4,994
CD BEAL BANK, SSB .300% OCT 13 2010	24,936
CD BEAL BANK NEVADA .300% OCT 13 2010	24,936
CD CHEVY CHASE BANK, 13 MONTH	5,789
CD CHEVY CHASE BANK, 13 MONTH	5,547
Total Unlisted Securities	$146,176

Real Estate Owned	
Personal residence	$1,720,600
Vacation Time Share	10,000
Total Real Estate Owned	$1,730,600

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00766 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.691

AFFIDAVIT

I, **AMY BERMAN JACKSON**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 16, 2010
(DATE)

Amy Berman Jackson
(NAME)

(NOTARY)

Sharyn M. Ellerbe
Notary Public, District of Columbia
My Commission Expires 11/14/2011

STATEMENT OF JUDGE JAMES SHADID, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

Judge SHADID. Thank you, Senator Durbin and Chairman Leahy and Ranking Member Sessions and this Committee, for considering my nomination and everybody else's nomination. And on a personal note, Senator Durbin, thank you very much for the confidence that you placed in me by sending my name on to the President. I appreciate that confidence you have in me and I can assure you that that confidence will be well placed. Thank you very much.

I'm proud to have present with me today my entire family. My wife, Jane; my sons, Jim and Joe; my daughter, Maggie. My parents are present, George and Lorraine Shadid. My niece is present, Lauren Shadid. Lauren is the daughter of my brother who passed from cancer 5 years ago. I'm glad that she was able to come with us today.

My cousin, who lives in the DC area, Tim Unes. And I saw a friend, a family friend, who is attending George Mason Law School; and, how he got wind of this I don't know, but he appeared. So I'll introduce him, as well, David Rashid.

Thank you.

Senator DURBIN. Thank you, Judge.

Judge Myerscough.

[The biographical information follow.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00768 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   James Edward Shadid

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Central District of Illinois

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Peoria County Courthouse
   324 Main Street, Room 215
   Peoria, Illinois 61602

4. **Birthplace**: State year and place of birth.

   1957; Peoria, Illinois

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1980 – 1983, The John Marshall Law School; J.D., 1983
   1975 – 1979, Bradley University; B.S., 1979

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2001 – present
   Circuit Court of Illinois, Tenth Judicial Circuit
   Peoria County Courthouse
   324 Main Street, Room 215
   Peoria, Illinois 61602
   Circuit Judge

66720.693

2004 – present
Bradley University
1501 West Bradley Avenue
Peoria, Illinois 61606
Adjunct Faculty

1983 – 2001
James E. Shadid Law Office
456 Fulton Street, Suite 192
Peoria, Illinois 61602
Sole Practitioner

1996 – 2001
Illinois Court of Claims
630 South College Street
Springfield, Illinois 62756
Commissioner (part-time)

1986 – 2001
Office of the Peoria County Public Defender
416 Main Street, Suite 300
Peoria, Illinois 61602
Assistant Public Defender (part-time)

1989 – 1990
Rose, Shadid & Boucher
627 Commerce Bank Building
Peoria, Illinois 61602
Law Partner

Mid 1980s (approximately two years)
Office of the Attorney General of Illinois
500 South Second Street
Springfield, Illinois 62706
Assistant Attorney General (part-time, handled estate matters)

Summer 1982
Parker & Halliday Attorneys
411 Hamilton Boulevard
Peoria, Illinois 61602
Law Clerk

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00770 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.694

Summer 1981
Heyl, Royster, Voelker and Allen
124 Southwest Adams Street, Suite 600
Peoria, Illinois 61602
Law Clerk

1979 – 1980
Joseph Abraham and Sons Amusement
922 Detweiller Drive
Peoria, Illinois
Route Collector

Summer 1979
San Francisco Giants
24 Willie Mays Plaza (current address)
San Francisco, California 94107
Minor League Baseball Player (assigned to Great Falls, Montana)

Other Affiliations (uncompensated)

1986 – 1989
PARC (formerly Peoria Association for Retarded Citizens, Inc.)
1913 West Townline Road
P.O. Box 3418
Peoria, Illinois 61612
Board of Directors

1994 – 1996
Pediatric Resource Center
530 N.E. Glen Oak Park Avenue
Peoria, Illinois 61637
Board of Directors

1992 – 1995
Greater Peoria Sanitary District
2322 South Darst Street
Peoria, Illinois 61607
President (1994)
Board of Directors (1992 – 1995)

1991 – 2001
Boys & Girls Clubs of Greater Peoria, Inc.
806 East Kansas Street
Peoria, Il 61603
President (2000 – 2001)
Board of Directors (1991 – 2001)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00771 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.695

1998 – 2001
St. Thomas Parish Council
904 E. Lake Ave
Peoria Heights, Il 61616
Vice-President (2000-2001)
Board of Directors (1998 – 2001)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the United States Military. I have not registered for selective service because I was born during a period when I was not required to do so.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Sheriff Schofield Community Service Award (2007)
   Forty under Forty Award, InterBusiness Issues (1995)
   Bradley University Athletic Hall of Fame (1984)
   Baseball Scholarship to attend Bradley University (1975 – 1979)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   Abraham Lincoln Inn of the Court
   American Bar Association
   Illinois State Bar Association
   Illinois Trial Lawyers Association
   Peoria County Bar Association
   Special Supreme Court Committee (Illinois) on Capital Cases (2010)

10. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

       Illinois, 1983

       There has been no lapse in membership.

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00772 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.696

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Seventh Circuit, 1984
United States District Court for the Central District of Illinois, 1983
Supreme Court of Illinois, 1983

There has been no lapse in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Peoria Association for Retarded Citizens (1986 – 1989)

Pediatric Resource Board (1994 – 1996)

Greater Peoria Sanitary District (1992 – 1995)
President (1994)

Boys & Girls Club of Greater Peoria (1991 – 2001)
President (2000 – 2001)

Mt. Hawley Country Club; Peoria, Il (1990 – 1993) & (1996 – present)

Old Timers Baseball Association (1985 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above discriminate on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00773 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.697

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None that I can recall or have been able to identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I can recall or have been able to identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None that I can recall or have been able to identify.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

As a judge, I have made it my practice to be involved in my community and to speak frequently to civic groups, students, and others, usually about the work of the judiciary. The list below is of all such speeches or talks I have been able to identify from my recollection, my files, and Internet searches, but there may be others that I was unable to find. All of my speeches have taken place in Peoria, Illinois.

May 2009. Speech to Summa Cum Laude dinner, Bradley University. Text supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00774 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.698

August 20, 2009. Speech to Kiwanis Club, Peoria Castle Lodge, on drug awareness. No text.

Fall 2008. Appeared with Judge Mark Drummond and Judge Paul Gilfillan at Peoria Notre Dame High School. Judge Drummond presented an Illinois Judges Association sponsored program called "Seven Reasons to Leave the Party." Judge Gilfillan and I did not present but we participated in a question and answer session after Judge Drummond's presentation. No text.

October 2006. Speech to Easter Seals Dinner honoring my parents for their work with autistic children, Peoria Civic Center. Text supplied.

May 2006. Speech to Woodruff High School. No text.

2006. Speech to Kiwanis Club, Jumers Castle Lodge. No text.

March 3, 2006. Speech to Peoria High School on making good choices. Text and coverage from the *Peoria Journal Star* supplied.

August 2005. Speech to Mitchell Anderson All-Star Basketball Camp. Coverage from the *Peoria Journal Star* supplied.

May 2004. Speech to Richwoods High School National Honor Society, Vonachen's Old Place. Text supplied.

March 2004. Speech to Illinois High School Association State Basketball Tournament Banquet, Pere Marquette Hotel. Text supplied.

February 12, 2004, "Dialogue on Freedom," South-West Kiwanis Club, Peoria Castle Lodge Restaurants.

2004. Panelist, "View from the Bench," (civil law) Continuing Legal Education, Peoria County Bar Association. No text.

2003. Speech on the Judiciary. South-West Kiwanis, Jumers Castle Lodge. Text supplied.

November 2002. "Dialogue on Freedom," Speech to the Optimist Club. Text supplied.

October 2002. "Dialogue on Freedom," Remarks at Bradley University as part of national program exploring American values and civic traditions through classroom dialogue with lawyers and judges. No text.

October 23, 2002. "Dialogue on Freedom," Speech to Kiwanis Club, Jumers Castle Lodge. Text supplied.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00775 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.699

October 10, 2002. Speech to Rotary Club, Barrack's Cater Inn. Text supplied.

2002. Panelist, "View from the Bench," (family law) Continuing Legal Education, Peoria County Bar Association. No notes.

December 2002. Remarks upon being sworn in as a judge. No text.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have given interviews only infrequently, but have not kept records of when I have done so. I have compiled the following list based on my recollection and searches of my files and Internet databases, but there may be others I have been unable to identify. Copies of all clips are supplied.

DeWayne Bartels, "Fewer Smiles and Passes in Courtrooms," PEORIA TIMES-OBSERVER, Aug. 13, 2008

Andy Kravetz, "Peoria Judges Streamline Court Time – Time Waiting for Trial Could be Cut by One-Third," PEORIA JOURNAL STAR, June 16, 2007

Terry Bibo, "Court Aims to Organize the Chaos," PEORIA JOURNAL STAR, Feb. 25, 2007

Terry Bibo, "Courthouse Clog? Call Judge Drano," PEORIA JOURNAL STAR, Feb. 11, 2007

Molly Parker, "Koehler Sworn in Early to Replace Shadid in Illinois Senate – Extra Seniority Will Give Him an Edge Against Other Newcomers," PEORIA JOURNAL STAR, Dec. 5, 2006

Phil Luciano, "Gun-Toting Kids Put Judge on the Spot," PEORIA JOURNAL STAR, May 25, 2006

Dave Haney, "Judge: Students All Have a Choice – Shadid Encourages Teens to Steer Clear of Crime," PEORIA JOURNAL STAR, Mar. 4, 2006

"George Shadid Had Three Careers in One Lifetime," PEORIA JOURNAL STAR, Oct. 3, 2005

Dave Reynolds, "Former Manual Player's Lessons Lead to the Sideline – Booth Tells Camp About Path From High School to the Pros as He Moves to the ICC Bench," PEORIA JOURNAL STAR, Aug. 3, 2005

Daniel C. Vock, "His Instincts as Lawyer Derive From Home Life," CHICAGO DAILY LAW BULLETIN, Feb. 4, 2004

Andy Kravetz, "Taps for Raps – The Banging of a Gavel, the Universal Symbol of a Judge's Authority, is Rarely Heard Nowadays," PEORIA JOURNAL STAR, Oct. 2, 2003

Jennifer Davis & Sonya Klopfenstein, "Word on the Street – Counties to Play Ball for Charity," PEORIA JOURNAL STAR, July 14, 2003

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00776 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.700

Sharon Oberholtzer, "Decorations by Mother Nature – Here's Pour Local Guide to Every Kind of Wedding Under the Sun," PEORIA JOURNAL STAR, July 10, 2003
Andy Kravetz, "James Shadid Secures 10th Circuit Judgeship," PEORIA JOURNAL STAR, Nov. 6, 2002
Andy Kravetz, "10th Circuit Court Judge – Courson Vacancy – Shadid, Thorbjornsen Seek to Replace Retired Judge Courson," PEORIA JOURNAL STAR, Nov. 2, 2002
Andy Kravetz, "10th Circuit Court Judge Courson Vacancy – James Shadid (D) – Charles Thorbjornsen (R)," PEORIA JOURNAL STAR, Nov. 2, 2002
Scott Mansch, "Down on the Farm," GREAT FALLS TRIBUNE, June 9, 2002
Michael Miller, "Lawyers: Pope's Plea is 'Impractical' – Judge, Attorneys Sound Off on Call to Shun Divorce Cases," PEORIA JOURNAL STAR, Jan. 30, 2002
Adriana Colindres, "Judge Candidate Named to Bench – James Shadid Replaces Courson, Will Run For Full Term," PEORIA JOURNAL STAR, Dec. 1, 2001
Anne M. Glenzer, "Sword-Wielding Central Illinois Man Pleads Guilty to State Trooper's Attempted Murder," COPLEY NEWS SERVICE, June 2, 2000
Jeff Coen, "Answers Still Elude Parents of Student Killed at Knox; Naperville Family Finds Comfort in Faith, Friends," CHICAGO TRIBUNE, Sept. 5, 1999
Jeff Coen, "Ex-Student Admits Killing Man, 19, Tells Judge He Was Mentally Ill," CHICAGO TRIBUNE, June 8, 1999
"Las Vegas Man Pleads Guilty in Illinois Beating Death of Woman," LAS VEGAS REVIEW-JOURNAL, June 8, 1999
Jeff Coen, "Lawyers of Knox Murder Suspect Can't Quit; Trial Date Set in Death of Naperville Woman," CHICAGO TRIBUNE, May 28, 1999
Kari Siegle, "Judge Says Murder Defendant's Attorneys Must Stay; Judge Orders Both to Represent Man Charged with Killing Knox Student," PEORIA JOURNAL STAR, May 28, 1999
Jeff Coen, "Knox Murder Defendant Allowed to Represent Himself," CHICAGO TRIBUNE, May 18, 1999
Jeff Coen, "Knox Slaying Suspect Wants to be His Own Attorney," CHICAGO TRIBUNE, Apr. 28, 1999
Jeff Coen, "Homicide Suspect Faces New Exams; Man's Mental Fitness for Knox Trial Uncertain," CHICAGO TRIBUNE, Mar. 18, 1999
Jeff Coen, "State Seeks Mental Exam of Slaying Suspect," CHICAGO TRIBUNE, Dec. 16, 1998
Jeff Coen, "Insanity Defense Eyed in Knox College Killing," CHICAGO TRIBUNE, Dec. 4, 1998
Jeff Coen, "Knox College Slaying Trial Set; Judge Finds Suspect, 19, Mentally Fit," CHICAGO TRIBUNE, Nov. 19, 1998
Jeff Coen, "Mental Fitness Ruling Delayed; More Evaluation OKd on Man Accused of Slaying Knox Student," CHICAGO TRIBUNE, Aug. 27, 1998
Jeff Coen, "Judge to Decide Fitness of Slaying Suspect After All," CHICAGO TRIBUNE, June 2, 1998

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00777 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.701

Janan Hanna, "Jury to Rule if Man is Fit for Trial in Knox Death; Naperville Student was Slaying Victim," CHICAGO TRIBUNE, May 28, 1998

Scott Hilyard, "Siblings of Famous Killer Write Book," COPLEY NEWS SERVICE, May 28, 1998 (this story describes me as a putative co-author of a book about a high-profile criminal case; although I understand that the would-be publisher circulated a soft-cover draft for promotional purposes, I never wrote any material for it and the book was not published)

Jim Stahly Jr., "Cunanan's Family Doesn't Understand Killing Spree," THE PANTAGRAPH, Aug. 9, 1997

Mark Fitton, "Peoria Attorney Representing Cunanan Family," COPLEY NEWS SERVICE, Aug. 7, 1997

Tim Meidroth, "Simpson Trial Tactics May Ripple Into Illinois; Lyons, Others See No Reason Why Racism Defenses Won't Increase," PEORIA JOURNAL STAR, Oct. 5, 1995

"Varying Views of Justice Evident in Area; Simpson Verdict Prompts Frank Comments on System," PEORIA JOURNAL STAR, Oct. 4, 1995

Mark Fitton, "Peculiar Verdict Ends Murder Trial; One Ruling of Guilt, One of Innocence for Peorian Appear to be Legally Inconsistent," PEORIA JOURNAL STAR, Apr. 16, 1992

George Geise, "Giants' Shadid Steals Bases . . . Legally," GREAT FALLS TRIBUNE, June 1979 (approximately).

In 2007, I gave an interview to WCBU Radio about our court reorganization. I have no transcript or recording.

In 2002, I completed a questionnaire for judicial candidates, a copy of which is supplied. I also met with the editorial board of the *Peoria Journal Star*. I have no material to provide from that meeting.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a Circuit Judge for the Tenth Judicial Circuit, State of Illinois, since December 2001. On December 1, 2001, I was appointed by the Illinois Supreme Court to fill a vacancy created by the retirement of Judge Donald Courson. On November 5, 2002, I was elected to a full six-year term as Circuit Judge. On November 4, 2008, I was retained for a second six-year term as Circuit Judge. The 10th Judicial Circuit is made up of Peoria, Tazewell, Stark, Putnam and Marshall Counties. The Circuit encompassed all trial courts in these counties, including felony, civil, family, juvenile, traffic and probate courts. Peoria and Tazewell Counties also have drug courts.

From 1996 to 2001, I served as a Commissioner of the Court of Claims, State of Illinois. I was appointed by Governor Jim Edgar. I presided over cases brought against the State of Illinois and made recommendations to the Court of Claims.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00778 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.702

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 300 criminal jury and bench trials. I have presided over thousands of additional pleas and sentencings during my time as a judge.

i. Of these, approximately what percent were:

jury trials:	75%
bench trials:	25%
civil proceedings:	10%
criminal proceedings:	90%

b. Provide citations for all opinions you have written, including concurrences and dissents.

In the Illinois circuit courts, judges do not typically issue opinions. It is routine that findings, or rulings, are made from the bench and announced in open court, on the record, and transcribed by the court reporter or the electronic recording. The list below consists of written opinions I was able to identify from my files.

Civil Cases
Garzee v. Crane Inc., No. 01 L 201
Adams v. City of Peoria, No. 02 CH 207; No. 3 06 0778
Wolfram v. Jones, No. 00 L 94
Bennett v. Kabatay, M.D., No. 01 L 450
Irby v. Halverson Construction; Hanson Professional Services and Midwest Foundation, No. 00 L 397; No. 01 L 4; No. 00 L 442 (consolidated cases)
McClaskey v. Rapid Amercian, No. 02 L 257
McClaskey v. Sprinkman Sons Corp, No. 02 L 257
Ramirez v. Smart Corp, No. 01 L 385
Downs v. Clayton House Motel, Inc., No. 02 LM 1363
Wolcott v. Carroll, No. 00 CH 258
Barlow v. Newmar Corp., No. 01 L 378
Clark v. Bell, No. 06 L 183
Funk v. First American Title, No. 02 LM 336
Hamlin v. Harbaugh Enterprises, No. 00 L 121
Johnson v. OSF Healthcare System, No. 03 L 122

Criminal Cases
People v. Bailey, No. 04 CF 825
People v. Bell, No. 95 CF 248
People v. Alexander, No. 05 CF 80
People v. Foster, No. 05 CF 1420

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00779 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.703

People v. Sims, No. 06 CF 235
People v. Pruitt, No. 05 CF 446

Domestic Relations Cases

McDonough v. McDonough, No. 01 D 770
Brignall v. Brignall, No. 03 D 272
In Re Clark, No. 02 D 487
In Re Hillyer, No. 91 D 1005
Fairow v. Fairow, No. 02 D 93
Peters v. Peters, No. 89 D 397
In re Anderson, No. 01 D 409
In re Barker, No. 02 D 481
In re Bergman, No. 89 D 63
In re Carter, No. 02 D 789
In re Clark, No. 01 D 629
In re Colloton, No. 95 D 471
In re Conklin, No. 02 D 209
In re Crane, No. 93 D 371
In re Crusen, No. 99 D 21
In re Dixon, No. 01 D 449
In re Duhs, No. 03 D 269
In re Ellis, No. 01 D 633
In re Evans, No. 96 D 884
In re Foster, No. 02 D 575
In Re Giberson, No. 02 D 509
In re Hafley, No. 99 D 769
In re Holm, No. 02 D 219
In re Hussain, No. 98 D 633
In re Hussain, No. 98 D 633
In re Jones, No. 01 D 862
In re Jones, No. 02 D 513
In re Kileli Hill, No. 02 AD 171
In re Leeper, No. 98 D 319
In re Martin, No. 01 D 843
In re McIntosh, No. 02 D 25
In re Nanninga, No. 02 D 449
In re Pottorf, No. 00 D 299
In re Sarmiento, No. 97 D 391
In re Schermann, No. 89 D 257
In re Sleevar, No. 02 D 359
In re Smith, No. 91 D 391
In re Smith, No. 95 D 728
In re Storck, No. 00 D 665
In re Taylor, No. 02 D 427
In re West, No. 96 D 567

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00780 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.704

In re White, No. 02 D 61
In re Winberry, No. 92 D 781

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *People v. Bright*, No. 05 CF 83. The defendant was charged with the murder of eight females who had been kidnapped and killed, and whose bodies had been burned. Although the State originally sought the death penalty, prosecutors agreed to a negotiated guilty plea on seven counts of first-degree murder and one count of drug-induced homicide. I imposed eight life sentences in prison.

The State's Attorneys were Kevin Lyons and Assistants Nancy Mermelstein and Dave Gast, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorney was James Elmore, 808 S. Second St. Springfield, Il. 62704, Tel: (217) 523-2340.

2. *People v. Sargent*, No. 08 CF 200. The defendants were charged with neglecting and starving their five-month-old child. The infant died after being without food and water for seven days. After a bench trial, I found the father guilty and sentenced him to 100 years in prison. Pursuant to a plea agreement, the mother pleaded guilty, and I imposed a sentence of fifty years in prison.

Father's case: The Assistant State's Attorneys were Nancy Mermelstein and Donna Cruz, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorney was William Loeffel, Williams, Williams & Loeffel, P.C., 139 E. Washington St., East Peoria, IL 61611, Tel: (309) 694-3196.

Mother's case: The State's Attorney was Kevin Lyons. Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorney was Thomas J. Penn, Jr., 416 Commerce Bank Bldg, Peoria, Il 61602, Tel: (309) 674-9332.

3. *People v. Miller*, No. 09 CF 454. The defendant, who had an extensive criminal history, was charged with trafficking over 140 pounds of cannabis. A jury found him guilty. I sentenced him to twenty-six years in prison.

The Assistant State's Attorneys were Jodi Hoos and Jeff Manderscheid, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorneys were Stanley Hill, 651 W. Washington Blvd. Chicago, IL 60661, Tel: (312) 917-8888; and Karen Kamp and Cassandra Justice, 416 Main St. Peoria, IL 61602, Tel: (309) 497-3315.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00781 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.705

4. *People v. Bradley*, No. 06 CF 949. The defendant was charged with heinous battery and aggravated domestic battery for torturing his wife over a two week period. A jury found the defendant guilty and I imposed the maximum sentence of fifty-nine years in prison.

The Assistant State's Attorney was Larry Evans, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 616102, Tel: (309) 672-6900. The defense attorneys were Kevin Sullivan, Janssen Bldg., 3d Floor, Peoria, Il 61602, Tel: (309) 696-2500 and Collette Bailey, Office of the Public Defender, 416 Commerce Bank Bldg., Peoria, Il 61602, Tel: (309) 674-9332.

5. *People v. Wright*, No. 06 CF 20. The defendant was charged with murder. During a drug deal, he stole money and shot and killed the buyer. His co-defendant testified against him and he was found guilty by a jury verdict. I sentenced him to sixty years in prison.

The Assistant State's Attorney was Nancy Mermelstein, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 616102, Tel: (309) 672-6900. The defense attorney was Collette Bailey, Office of the Public Defender, 416 Commerce Bank Bldg., Peoria, Il 61602, Tel: (309) 674-9332.

6. *People v. Cromick*, No. 08 CF 1090. The defendant, a 24 year old soccer coach of a high school girls soccer team, was charged with Aggravated Criminal Sexual Abuse. Specifically, he was charged with committing an act of sexual conduct with a 16-year-old player on his team. The defendant denied the allegations, claiming he was being set up. The student testified as to the consensual nature of the conduct. Even though consensual, the age of the student made this act a felony by statute. A jury found the defendant guilty and I sentenced him to four years imprisonment. The Assistant State's Attorney was Brian Fitzsimmons, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorney was Joel Brown, 416 Main Street, Suite 1300, Peoria, Il 61602, Tel 309-673-4357.

7. *People v. Satterwhite*, No. 04 CF 1179. Upon his release from a Michigan prison where he had been incarcerated on a prior conviction, the defendant returned home to Peoria where he beat and sexually assaulted his mother. A jury found him guilty and I sentenced him to thirty years in prison.

The Assistant State's Attorney was Nancy Mermelstein, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. The defense attorney was Robert Gaubas (no longer practicing law).

8. *People v. McCottrell*, No. 08 CF 102. The defendant in this case was charged with robbery of a pharmacy. Surveillance video had captured the defendant walking up a set of stairs to the store manager's office, where he repeatedly

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00782 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.706

assaulted the store manager on the head with a hammer, took money and left. After a bench trial, I found the defendant guilty and sentenced him to thirty years in prison.

The Assistant State's Attorney was Seth Uphoff, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 616102, Tel: (309) 672-6900. The defense attorney was Collette Bailey, Office of the Public Defender, 416 Commerce Bank Bldg., Peoria, Il 61602, Tel: (309) 674-9332.

9. *People v. Harris* (04 CF 897). The defendant was charged with armed robbery in a local bar. He was found guilty by jury verdict and sentenced to twenty-four years in prison. The defendant appealed his conviction over an issue of admissibility of prior juvenile adjudications. The Appellate Court of Illinois, Third District, and the Supreme Court of Illinois affirmed my rulings. 901 N.E.2d 367 (Ill. 2008).

The Assistant State's Attorney was Jodi Hoos, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 616102, Tel: (309) 672-6900. The defense attorney was Gary Morris, 411 Hamilton Blvd. Peoria, IL 61602-3100, Tel: (309) 676-1594.

10. *People v. Williams*, No. 07 CF 111. Under the pretense of a drug deal, the defendant, along with three other individuals, planned to rob the occupants of a residence. The principal defendant and three accomplices entered the building, encountered the victim cooking dinner, and killed the victim when he approached the door. I imposed a life sentence on the principal defendant.

The Assistant State's Attorney was Jodi Hoos, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 616102, Tel: (309) 672-6900. The defense attorney was William Loeffel, Williams, Williams & Loeffel, P.C., 139 E. Washington St., East Peoria, IL 61611, Tel: (309) 694-3196.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Garzee v. Crane*, No. 01 L 201. Counsel for Garzee were Lisa Corwin and Andrew Kelly, Walker & Wylder, 207 W. Jefferson St., #200, Bloomington, IL 61701, Tel: (309) 828-5099. Counsel for Crane was Thomas Burns, O'Connell and Assoc., 645 Tollgate Rd., #220, Elgin, IL 60123, Tel: (847) 741-4603.

2. *Adams v. City of Peoria,* Nos. 02 CH 207 & 3-06-0778. Counsel for Adams was George Galland, Jr., Miner, Barnhard and Galland, 14 W. Erie St., Chicago, IL 60610, Tel: (312) 751-1170. Counsel for City of Peoria was David Jones, Hinshaw & Culbertson LLP.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00783 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.707

3. *Ramirez v. Smart Corp*, No. 01 L 385. Counsel for Ramirez was Cusack, Gilfillan & O'Day, 415 Hamilton Blvd., Peoria, IL 61602, Tel: (309) 637-5282. Counsel for Smart was Stephen Heine, Heyl, Royster, Voelker & Allen, 124 SW Adams St., Peoria, IL 61602, Tel: (309) 676-0400.

4. *McDonough v. McDonough*, No. 01 D 770. Wife's counsel was Gerald Brady, 1133 N. North St., Peoria, IL 61606, Tel: (309) 674-0821. Husband's counsel was David Benckendorf, 101 NE Randolph Ave., Peoria, IL 61606, Tel: (309) 673-0797.

5. *Brignall v. Brignall*, No. 03 D 272. Wife's counsel was John Vespa, 411 Hamilton Blvd., Suite 1900, Peoria, IL 61602, Tel: (309) 671-0700. Husband's counsel was David Lynch, Lynch & Bloom P.C., 411 Hamilton Blvd., Suite 1300, Peoria, IL 61602, Tel: (309) 673-7415.

6. *People v. Bailey*, No. 04 CF 825. The Assistant State's Attorney was Nancy Mermelstein, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. Counsel for Bailey was Marcia Straub, 411 Hamilton Blvd., Suite 1936, Peoria, IL 61602, Tel: (309) 637-8240.

7. *People v. Bell*, No. 95 CF 248. The Assistant State's Attorney was Joe Bembenek, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. Counsel for Bell was Marcia Straub, 411 Hamilton Blvd., Suite 1936, Peoria, IL 61602, Tel: (309) 637-8240.

8. *People v. Foster*, No. 05 CF 1420. The Assistant State's Attorney was Joe Bembenek, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900. Counsel for Bell was Marcia Straub, 411 Hamilton Blvd., Suite 1936, Peoria, IL 61602, Tel: (309) 637-8240.

9. *In Re Clark*, No. 02 D 487. Wife's counsel was David Lynch, Lynch & Bloom P.C., 411 Hamilton Blvd., Suite 1300, Peoria, IL 61602, Tel: (309) 673-7415. Husband's counsel was Drew Parker, 411 Hamilton Blvd., Suite 1900, Peoria, IL 61602, Tel: (309) 673-0069.

10. *Peters v. Peters*, No. 89 D 397. Wife's counsel was David Lynch, Lynch & Bloom P.C., 411 Hamilton Blvd., Suite 1300, Peoria, IL 61602, Tel: (309) 673-7415. Husband's counsel was Philip Jaeger, 416 Main St., Suite 727, Peoria, IL 61602, Tel: (309) 673-8108.

e. Provide a list of all cases in which certiorari was requested or granted.

I am not aware of any case I decided in which certiorari was requested of or granted by the Supreme Court of the United States.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00784 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.708

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

As a trial judge, I have sought to apply the law to the facts in each case before me and have not tracked appeals and reversals. To prepare my answer to this question, I supplemented the cases I recalled by requesting from the Appellate Court of Illinois (Third District) a report of appeals of cases over which I presided.

I recall the following reversals in detail:

People v. Alexander, 05 CF 80 and No. 3-08-0373. The Appellate Court found that I had erred in sentencing a defendant to 24 years imprisonment for discharge of a firearm and unlawful use of a weapon by treating the occurrence of the crime in a school (where the defendant shot five times at the victim while chasing him through school hallways where other teachers and students were present) as an aggravating factor. On remand, I imposed the same sentence based on the number of shots fired and the circumstances of the offense. The Appellate Court reduced the sentence to six years.

People v. Newborn, 379 Ill. App. 3d 240 (Ill. App. Ct 2008). The Appellate Court remanded for a new trial on armed robbery charges, finding that I had improperly refused to allow impeachment of a witness with the witness' juvenile felony adjudications.

Lulay v. Parvin and Walters Bros. Harley-Davidson, Inc., No. 00-L-318, 834 N.E.2d 989 (Ill. App. Ct. 2005). The Appellate Court reversed my grant of summary judgment, finding a genuine issue of material fact created by the language in a release of claims for injuries occurring during demonstration rides of motorcycles.

Adams v. City of Peoria, 228 Ill. 2d 529 (Ill. App. Ct. 2008). The Appellate Court reversed my decisions on cross-motions for summary judgment in this breach of contract case.

People v. Holley, 879 N.E.2d 530 (Ill. App. Ct. 2007). The Appellate Court remanded for hearing on an ineffective assistance of counsel claim, which was based on defendant's assertion that he had told his attorney he wanted a bench trial rather than a jury trial on charges of aggravated criminal sexual assault, and for resentencing in light of a citation to an incorrect code subsection.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00785 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.709

Although there may be others I have been unable to identify, I generated the following list of other reversals from the Appellate Court report of appeals from my cases and from my notes:

People v. Thompson, No. 3-05-0205 (reverse/remand)
People v. Wooten, No. 3-05-0295 (remand for hearing post-conviction)
People v. Jackson, Nos. 3-05-0301 & 3-05-0338 (remand for hearing post-conviction)
People v. Lilly, No. 3-05-0435 (remand ineffective assistance of counsel)
People v. Woods, No. 3-06-0120 (remand for hearing post-conviction)
People v. Pruitt, No. 3-06-0765 (remand for hearing post-conviction)
People v. Younger, No. 3-07-0114 (reversed – remand new trial)
People v. Young, No. 3-7-0331 (remand ineffective assistance of counsel)
People v. Alexander, No. 3-08-0373 (affirmed judgment, reduced sentence)
People v. Brown, No. 3-09-0225 (remand 604(d) certificate)
People v. McDonald (remand 604(d) certificate)

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As is typical in Illinois circuit courts, I make most rulings and decisions from the bench, in open court, on the record for transcription by the court reporter or recording by electronic device. My rulings and decisions are almost always accompanied by my reasoning. All of my written opinions have been unpublished.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00786 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.710

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our court does not employ an automatic recusal system. Recusal is governed by the procedures and guidelines in Rule 63 of the Illinois Code of Judicial Conduct, and as provided by statute. I also undertake my own analysis about any potential conflict or appearance of conflict based on the facts and circumstances of each case.

The Code of Conduct, Rule 63c, sets a time frame for recusal as it pertains to prior representation of a party or a witness. In these instances, strict compliance with the Rule resolves any appearance that impartiality might reasonably be questioned.

In other instances of prior representation, outside of the time frame requiring recusal, I have in each case made full disclosure on the record and in open court. In some cases, I have made the full disclosure in open court and then allowed the parties to make a determination as set forth in our Code of Conduct. In other cases, I have recused myself in the first instance.

Illinois Supreme Court Rule 402 allows the court to become involved in plea discussions in criminal cases where the defendant requests and the State consents to such involvement. After a record is made, and if the 402 conference occurs, there is a procedure for recusal if the court has given conditional concurrence to a negotiated plea and later withdraws that conditional concurrence.

Illinois also has a statute that allows a party an automatic substitution of judge if done within 10 days of the case being placed on the judge's call.

Although I have not kept records of cases in which I recused myself or in which my recusal was requested, I recall three specific cases:

People v. Hinkle, Nos. 08 CF 62; 08 CF 187; 08 CF 256. I recused myself sua sponte. Hinkle was charged with several counts of aggravated sexual assault and the case was assigned to my courtroom. During the pretrial portion, the case became an issue in the contested State's Attorney's race. The defense filed motions for change of venue and requests for certain information. In particular, the defense stated an intent to subpoena

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00787 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.711

Darin LaHood (the challenger) as a witness for these hearings. Given that I know both Mr. LaHood and Mr. Kevin Lyons (the incumbent), I recused myself from the case.

People v. Herndon, No. 09 CF 1046. The defendant moved for substitution of judge pursuant to 725 ILCS 5/114-5, which, upon motion of a party, provides for an automatic substitution of judge within 10 days of a matter being placed on the judges trial call. The statute does require the defendant to state a reason if the motion is timely filed.

Ruch v. Ruch, No. 04 D 225. Defendant Ruch was a lawyer in Kankakee, Illinois, involved in this contentious divorce proceeding with his wife. The Kankakee County courts looked for a judge from out of the area to handle the case. When I took the case, Mr. Ruch moved to recuse me. I do not know why. To avoid having the matter delayed, another judge from our circuit took over the case.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. In 1990, I was unsuccessfully a candidate for Circuit Judge of the Tenth Judicial Circuit, State of Illinois. I have had no other unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Volunteer, Edward Kennedy for President, Peoria, Illinois, 1980. I distributed literature, put up signs and spoke at campaign events throughout central Illinois.

Volunteer, Neil Hartigan for Attorney General of the State of Illinois, Chicago, Illinois, 1982. I distributed literature.

Volunteer, George Shadid for Peoria County Sheriff, Peoria, Illinois, 1976-1978-1982-1986 and 1990. I distributed literature, put up signs and spoke at campaign events.

Volunteer, George Shadid for Illinois State Senate 46th District, Peoria, Tazewell and Fulton counties, 1994-1996-2000-2004.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00788 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.712

Candidate, James E. Shadid for Circuit Judge, Peoria, Illinois, 1990 (lost).

Candidate, James E. Shadid for Circuit Judge, Peoria, Tazewell, Marshall, Putnam and Stark counties, 2002 (won).

Candidate, James E. Shadid for retention for Circuit Judge, Peoria, Tazewell, Marshall, Putnam and Stark counties, 2008.

Volunteer, Joe McDade for Circuit Judge, 1998. My wife and I hosted a neighborhood gathering for Judge McDade.

I was a member of the Young Democrats in the mid 1980s and early 1990s. I attended various local political functions.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I was a sole practitioner from 1983 to 2001 at the following addresses:

456 Fulton, Suite 192, Peoria, Il 61602 (1994-2001)
627 Commerce Bank, Peoria, Il 61602 (1990-1994)
456 Fulton, 2d Floor, Twin Towers, Peoria, Il 61602 (1984-1990)

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Mid 1980s (approximately two years)
Office of the Attorney General of Illinois
500 S. Second St.
Springfield, Illinois 62706
Assistant Attorney General (part-time, handled estate matters)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00789 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.713

1986 – 2001
Office of the Peoria County Public Defender
416 Main St., Suite 300
Peoria, Illinois 61602
Felony Court Public Defender (part-time, 1989 – 2001)
Juvenile Court and Traffic Court Public Defender (part-time, 1986 – 1989)

1990 – 1991
Raymond C. Rose, Ltd.
627 Commerce Bank Bldg,
Peoria, Illinois 61602
Law Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I set up my law practice immediately upon my admission to the Illinois bar in 1983. I rented an office from Mr. Harry Sonnemaker, Jr. Initially, my practice consisted of family law and traffic cases. Mr. Sonnemaker was a lawyer for the Peoria Credit Union and he allowed me to handle much of his collection work to help my practice start growing.

In the mid 1980s, my work grew into a more general practice of law. I worked in many areas, including contracts, simple wills and estates, small personal injury cases, workmen's compensation, traffic, misdemeanor and felony cases. By the end of the 1980s I was being retained in a number of criminal cases in the misdemeanor and felony courts.

In 1990, I partnered with Raymond C. Rose for approximately one year. During my partnership with Mr. Rose, I handled personal injury and medical malpractice cases.

Beginning about 1990, I started receiving some high profile cases. Although I handled some serious personal injury cases in the civil courts, I spent most of my time in the criminal courts, at both the state and federal level.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00790 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.714

During the course of the next 10 years, I tried approximately 12 murder trials to jury verdict in the Peoria county circuit courts. Two of these were death penalty eligible. In the state courts, I tried cases of home invasion, armed robbery, delivery of controlled substances, and burglary, among others. In the federal courts I tried gambling and tax evasion, conspiracy to deliver controlled substances, and welfare fraud. I handled cases such as mail fraud, RICO actions, cocaine distribution and illegal transportation of wildlife in interstate commerce.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients were individuals in need of contracts, simple will and estate work, or representation in injury, workmen's compensation, traffic, misdemeanor and felony cases. During my partnership with Mr. Rose I also handled medical malpractice cases.

After 1990, criminal law was my specialty.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Much of my practice was in litigation requiring frequent court appearances from 1984 to 2001.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 88%
   3. other courts:
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings 25%
   2. criminal proceedings 75%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried hundreds of cases to jury verdict, almost all as sole counsel.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00791 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.715

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I unsuccessfully filed a petition for certiorari in *Equal Employment Opportunity Commission (EEOC) v. Hiram Walker & Sons Inc.*, a matter in which I represented 39 female employees of the defendant company as intervenors in a settlement between the EEOC and the defendant company. 768 F2d 884 (7th Cir. 1985), *cert denied*, 478 U.S. 1004 (1986). I have not retained copies of the petition. I recall no other practice before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *EEOC v. Hiram Walker*, No. 83-CV-1024 (C.D. Ill.), 768 F2d 884 (7th Cir. 1985), *cert denied*, 478 U.S. 1004 (1986). Hiram Walker had been a major employer in Peoria since 1934. In 1983, the EEOC and Hiram Walker reached a settlement on claims by women workers that, during the 1960s and 1970s, they had suffered segregated job classifications, been promoted less frequently, and been paid lower salaries with smaller pensions than their male co-workers. I represented 39 women employees who challenged this settlement as intervenors on appeal to the U.S. Court of Appeals for the Seventh Circuit. The question on appeal was whether the district court abused its discretion in approving the consent decree, which granted limited relief to the class of employees as a whole and virtually no relief to those employees, many of them charging parties, who allegedly endured the most discrimination. Although we were unsuccessful, I believe this was among the most significant representations I took on as a practicing attorney. My co-counsel was Kevin Lyons, Office of the State's Attorney, Peoria County Courthouse, Peoria, Il 61602, Tel: (309) 672-6900.

2. *United States v. Long*, No. 98-cr-10064 (C.D. Ill. 1998). My client, the defendant, was charged with a number of others in a RICO action, cocaine distribution and transportation of stolen vehicles. The defendant reached a plea agreement and was sentenced to the Federal Bureau of Prisons. The Hon. Michael M. Mihm presided. The

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00792 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.716

Assistant United States Attorney was K. Tate Chambers, Peoria Office, 211 Fulton, Suite 400, Peoria, Il 61602, Tel (309) 671-7050.

3. *United States v. Reimer*, No. 97-cr-10050 (C.D. Ill. 1997). Reimer was charged with illegal transportation of wildlife in interstate commerce. He hired a lawyer from Arizona and I acted as local counsel. The case was dismissed at the motion stage, with the court finding that the prosecution was barred by a previous plea agreement the defendant had entered into in Missouri. Magistrate Kauffman presided over the case. The Assistant United States Attorney was Brad Murphy, Peoria Office, 211 Fulton, Suite 400, Peoria, Il 61602, Tel (309) 671-7050.

4. *United States v. Smith*, No. 94-cr-30014 (C.D. Ill. 1994). My client, Smith, and six others were charged with conspiracy to conduct a gambling operation. Smith was found guilty by jury verdict. The verdict was set aside by Judge Richard Mills in post-trial motions and Smith ultimately pled guilty to a misdemeanor. The Assistant United States Attorney was Pat Chesley, United States Courthouse, Rm 362, 600 E. Monroe, Springfield, Il 62701, Tel (217) 492-4450.

5. *People v. Miles*, No. 91 CF 575 (Ill. Cir. Ct. Peoria County 1991). My client, Miles, was charged with the murder of an individual in a drug house in Peoria's Warner Homes housing complex. Miles was found not guilty. Judge John Barra presided. The Assistant State's Attorneys were Al Purham and Joe Nack, 324 Main St., Peoria County Courthouse, Peoria, Il 61602, Tel (309) 672-6900.

6. *People v. Behm*, No. 97 CF 891 (Ill. Cir. Ct. Peoria County 1997). Behm was charged with the murder of a patron at a local bar. The deceased had assaulted Behm's niece some years before. Behm was bartending when the deceased walked in and sat down. The two exchanged words and Behm shot him six times. Behm was found guilty by jury verdict and sentenced to forty-five years in prison. Judge Donald Courson presided. The Assistant State's Attorney was Frank Ierulli, 324 Main St., Peoria County Courthouse, Peoria, Il 61602, Tel (309) 672-6900.

7. *People v. Childs*, No. 99 CF 810 (Ill. Cir. Ct. Peoria County 1999). My client, Childs, was charged with murder. He and a friend planned to rob someone they knew. Childs was instructed to go to the rear of the house and fire into the back of the house, which in turn would cause the people inside to run out the front. His cohort planned to wait out front and rob the residents at gun point when they exited. Childs had a semiautomatic assault weapon. He fired more than thirty rounds into the back of the house, some of which struck and killed his cohort on the front porch. Child's was found guilty by jury verdict and sentenced to fifty years in prison. Judge Michael Brandt presided. The Assistant State's Attorney was Nancy Mermelstein, 324 Main St., Peoria County Courthouse, Peoria, Il 61602, Tel (309) 672-6900.

8. *People v. Milestone*, No. 93 CF 613 (Ill. Cir. Ct. Peoria County 1993). Milestone was charged with the murder of a fellow worker. Upon Milestone's arrest his mother called me and arranged for my representation. I called the sheriff's department and spoke to the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00793 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.717

detective in charge. I told him I would be representing Milestone and would like to talk to him on the phone. I was told that Milestone, who was age 23, had not requested an attorney. Milestone did not know that I had called and subsequently confessed. The pre-trial Motion to suppress the confession was denied and Milestone was found guilty by jury verdict. Milestone was sentenced to forty-five years in prison. Judge Robert Manning presided. On appeal the case was reversed and the confession was suppressed. On remand, Milestone pleaded guilty to second degree murder and per the negotiated plea was sentenced to fifteen years in prison. The Assistant State's Attorney was Al Purham, 324 Main St., Peoria County Courthouse, Peoria, Il 61602, Tel (309) 672-6900.

9. *Yetton v. Henderson*, No. 86 L 527 (Ill. Cir. Ct. Peoria County 1986). My client, Yetton, was injured when a semi driven by Henderson switched lanes in front of him. Yetton's vehicle slammed into the rear of the semi. Defendant Henderson's wife had been a passenger in the semi. At trial the plaintiff was not allowed to testify as to the events of the accident because of the Dead Man's Act (Henderson had died subsequent to the accident and prior to trial). At trial, the deceased's wife testified as to the deceased's careful driving habits. I started to cross examine about the accident. The defense objected. I argued the door was open and the Dead Man's Act no longer prohibited examination about the event. Judge Eagleton disagreed, sustaining the defense objection and further instructed the jury to disregard the testimony. The jury verdict was for the defense. I appealed. The Third District Appellate Court reversed on the issue of the Dead Man's Act and remanded for new trial. The case settled before retrial. Judge Richard Eagleton presided. The defense lawyer was Paul Gilfillan, now at Peoria County Courthouse, Rm 215, Peoria, Il 61602, Tel (309) 672-6047.

10. *People v. Miller*, No. 92 CF 22 (Ill. Cir. Ct. Peoria County 1992). My client, Stanley, was one of three co-defendants charged with aggravated battery and mob action. The three victims were members of the World Wrestling Association. The victims had finished an event at the Peoria Civic Center and were driving to their motel, after having had a few beers. They encountered the defendants in their own vehicle, the occupants of both vehicles exchanged words and then stopped and engaged in a confrontation in which my client and his co-defendants were alleged to have injured the victims with a knife. The defendants were found guilty by jury verdict and sentenced. Judge Donald Courson presided. The Assistant State's Attorneys were Dale Thomas and Ed Deters, 324 Main St., Peoria County Courthouse, Peoria, Il 61602, Tel (309) 672-6900.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Until I became a judge, my practice was primarily in litigation before the courts.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00794 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.718

In 2007, I spearheaded the reorganization of the Peoria County courts that handle traffic, DUI, and misdemeanor matters. These courts have approximately 13,000 filings each year. Although Circuit Judges do not routinely preside over traffic or misdemeanor courts, I volunteered for an assignment to those courts for the specific purpose of devising a solution to the large backlog of cases and to devise a docket management procedure so the backlog did not occur again. Another purpose of the reorganization, in addition to reducing backlog, was to reduce the amount of time citizens would spend in court waiting for their case to be called and the number of court appearances those citizens would have to make to process their cases expeditiously.

Another significant legal activity was seeking—and receiving—approval from the American Bar Association to administer a project called "Dialogue on Freedom." Upon approval, and receipt of information, I contacted local high schools and presented the first program at Bradley University. The Hon. Michael M. Mihm presented with me. The dialogue was with students from a number of high schools. I believe this is significant because the purpose was to explore American civic values and traditions with students.

Another significant legal activity is that I am currently involved in studying the feasibility of starting a law school at Bradley University. Joanne Glasser, President of Bradley, requested that Rex Linder, a partner at a major Peoria law firm, and I, explore this possibility beginning in summer 2009. Mr. Linder and I sought input from a number of academics and law school deans. Based on our recommendations, the Board of Trustees of Bradley University has initiated a formal feasibility study.

I have not performed any lobbying activities and have never been registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Spring 2002 to 2004: Adjunct professor teaching legal research online at Illinois Central College. The subject matter was legal research. I have not retained the syllabus.

Winter 2003: for one semester, an Adjunct professor teaching Civil Procedure online at Mid State College. The subject matter was civil procedure. I have not retained the syllabus.

Spring 2004 to the present: an Adjunct professor at Bradley University. The course is called the "Legal Environment of Business." The subject matter covers the framework of the courts, constitutional issues, the civil and criminal trial process, business crimes, torts and product liability, agency and employment discrimination. Syllabus supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00795 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.719

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

None.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would resolve any conflicts by strict compliance with the recusal statutes and with Canon 3 of the Code of Conduct for United States Judges, as well as with careful attention to any other applicable guidelines.

I am well aware that our legal system is based on the principle that an independent, fair and competent judiciary is central to the concepts of justice and the rule of law. I am aware, as well, that it is a judge's special responsibility to conduct himself or herself at all times—inside and outside of the courtroom—in a manner that will foster respect for the judiciary and our rule of law.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00796 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.720

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the course of my practice I represented many people, free of charge, due to their lack of ability to pay. I am unable to list specific incidents but most of these instances would have been in traffic or misdemeanor court or in divorce or forcible detainer cases.

Since becoming a judge, I have continued to seek opportunities to make the legal system available to those who might not otherwise have access. For example, as a judge assigned to family court from 2002 to 2003, I worked with Prairie State Legal Services to set aside a couple of days specifically for Prairie State to assist in resolving a backlog of hundreds of pending dissolution of marriage cases.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In September 2009, Senator Richard Durbin formed a bipartisan screening committee, chaired by Mr. James Potter, to evaluate applications for the position of United States District Judge for the Central District of Illinois. I submitted an application to the Committee.

In mid-December 2009, Mr. Potter contacted me to schedule an interview with the committee. I interviewed with the committee in Peoria on January 6, 2010. The commission recommended my candidacy to Senator Durbin. I interviewed with Senator Durbin, at his Springfield office on January 23, 2010.

Since February 19, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C., on April 1, 2010. On May 27, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00797 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.721

implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Shadid, James E.	District Court, Central District of Illinois	05/28/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge- Nominee	☑ Nomination. Date 05/27/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 04/30/2010
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.	
Peoria County Courthouse 324 Main St., Room 215 Peoria, Il 61602	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.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2001	Judges Retirement System of Illinois-- pension upon retirement (no control)
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 14	Name of Person Reporting	Date of Report
	Shadid, James E.	05/28/2010

III. NON-INVESTMENT INCOME. *(Reporting Individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	Judicial Salary- State of Illinois	$58,000.00
2.	2010	Bradley University- Teaching	$2,500.00
3.	2009	Judicial Salary- State of Illinois	$171000.00
4.	2009	Bradley University- Teaching	$5,000.00
5.	2008	Judicial Salary- State of Illinois	$169,000.00
6.	2008	Bradley University- Teaching	$5,000.00
7.			
8.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					

FINANCIAL DISCLOSURE REPORT Page 3 of 14	Name of Person Reporting Shadid, James E.	Date of Report 05/28/2010

4.

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 14	Name of Person Reporting Shadid, James E.	Date of Report 05/28/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Chase Bank	Credit Card	J
2.	U. S. Government- Direct Loans	student loan- A	J
3.	U. S. Government- Direct Loans	student loan- B	J
4.	Chase Health	medicals	J
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. Camden County Mun Utils bonds	B	Interest	K	T	Exempt				
2. Ill State CollegeSvgs bonds	A	Interest	K	T					
3. Illinois State Zero College bonds	A	Interest	K	T					
4. IRA 1- all common stock		None	N	T					
5. -Abbott Laboratories ABT									
6. -Alkermes ALKS									
7. -Allied World AWH									
8. -Amazon Com AMZN									
9. -Amgen AMGN									
10. -Anadarko Petroleum APC									
11. -AOL									
12. -Applied Materials Delaware AMAT									
13. -Autodesk Inc ADSK									
14. -Baker Hughes BHI									
15. -Bank of America BOA									
16. -Barrick Gold ABX									
17. -Bed Bath & Beyond BBBY									

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 =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 6 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
18. -Berkshire Hathaway BRKB									
19. -Biogen Idec BIIB									
20. -Boeing BA									
21. -Broadcom Corp BRCM									
22. -Cablevision Systems CVC									
23. -Celgene Corp CELG									
24. -Chevron CVX									
25. -Chubb CB									
26. -Cisco Sys CSCO									
27. -Citrix Systems CTXS									
28. -Coca-Cola KO									
29. -Comcast CMCSK									
30. -Comerica CMA									
31. -Covidien PLC Dublin COV									
32. -Cree CREE									
33. -CVS Caremark CVS									
34. -Direct TV DTV									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 7 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
35. -Discovery Communication DISCK									
36. -Discovery Communication DISCA									
37. -Dolby Laboratories DLB									
38. -Dover Corp DOV									
39. -Dreyfus Money Market #DMM									
40. -E I DuPont DD									
41. -East West Bancorp EWBC									
42. -Ebay EBAY									
43. -Electronic Arts ERTS									
44. -Emerson Electric EMR									
45. -Ericsson L M Tel ERIC									
46. -Expedia EXPE									
47. -Exxon Mobil XOM									
48. -Fluor Corp FLR									
49. -Forest Lab FRX									
50. -Franklin Resources BEN									
51. -Freeport McMoran Copper FCX									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 8 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
52. -Gamco Investors GBL									
53. -Gap GPS									
54. -General Electric GE									
55. -Genzyme Corp GENZ									
56. -Google GOOG									
57. -Home Depot HD									
58. -Honeywell HON									
59. -Intel Corp INTC									
60. -Intl Business Machines IBM									
61. -Jacobs Engineering JEC									
62. -Johnson & Johnson JNJ									
63. -JP Morgan JPM									
64. -Juniper Networks JNPR									
65. -Kraft Foods KFT									
66. -L 3 Communications LLL									
67. -LaSalle Hotel LHO									
68. -Lawson Software LWSN									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 9 of 14	Name of Person Reporting Shadid, James E.	Date of Report 05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, 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)
69. -Legg Mason SHRAX									
70. -Legg Mason CB Appreciation SHAPX									
71. -Liberty Global LBTYA									
72. -Liberty Global LBTYK									
73. -Liberty Media Starz LSTZA									
74. -Liberty Media Hldg LCAPA									
75. -Madison Square Garden MSG									
76. -McDermott Intl MDR									
77. -McKesson Corp MCK									
78. -Merck & Co MRK									
79. -Microsoft Corp MSFT									
80. -Murphy Oil Corp MUR									
81. -Nasdaq OMX Group NDAQ									
82. -National Oil Well NOV									
83. -Novartis AG NVS									
84. -Novellus Sys NVLS									
85. -Nucor Corp NUE									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 10 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
86. -Nvidia Corp NVDA									
87. -Paccar Inc PCAR									
88. -Pall Corp PLL									
89. -Penske Automotive PAG									
90. -Pepsico Inc PEP									
91. -Pfizer Inc PFE									
92. -Proctor & Gamble PG									
93. -Qualcomm Inc QCOM									
94. -Raytheon Co RTN									
95. -Robert Half International RHI									
96. -Roche HLDG ltd RHHBY									
97. -Sandisk Corp SNDK									
98. -Schlumberger Ltd SLB									
99. -Schwab Charles Corp SCHW									
100. -Seagate Technology STX									
101. -Sears Holdings Corp SHLD									
102. -Simpson MFG Co SSD									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 11 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
103. -State Street Corp STT									
104. -Synovus Financial Corp SNV									
105. -Taiwan Semiconductor TSM									
106. -Texas Instruments TXN									
107. -Time Warner Cable TWC									
108. -Time Warner Inc TWX									
109. -Transocean Ltd Switzerland RIG									
110. -Tutor Perini Corp TPC									
111. -Tyco Electronics TEL									
112. -Tyco Intl Ltd TYC									
113. -Unilever PLC Spons ADR UL									
114. -United Parcel Service UPS									
115. -United Health Group UNH									
116. -Varian Semiconductor Equip VSEA									
117. -Verigy Ltd VRGY									
118. -Verizon Communications VZ									
119. -Vertex Pharmaceuticals VRTX									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 12 of 14

Name of Person Reporting	Date of Report
Shadid, James E.	05/28/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
120. -Vodafone Group VOD									
121. -Wal-Mart Stores Inc WMT									
122. -Walt Disney DIS									
123. -Weatherford International WFT									
124. -Weyerhaeuser Co WY									
125. -Williams Sonoma WSM									
126. IRA 2		None	J	T					
127. -Bank Deposit Program BDP cash									
128. -Consolidated Edison ED common stock									
129. -Legg Mason Clearbridge Fund SBLGX common stock									
130.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

66720.732

FINANCIAL DISCLOSURE REPORT Page 13 of 14	Name of Person Reporting Shadid, James E.	Date of Report 05/28/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 14 of 14	Name of Person Reporting Shadid, James E.	Date of Report 05/28/2010

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 James E Shadid

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

James Shadid

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		44	791	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-see schedule		71	899	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 -primary residence		90	000
Real estate owned-primary residence		250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		17	500	Chase Health (Medical)		6	170
Cash value-life insurance				Chase Mastercard		2	000
Other assets itemize:							
IRA – Account 1 – see schedule		342	601				
IRA – Account 2 – see schedule		8	628				
				Total liabilities		98	170
				Net Worth		637	249
Total Assets		735	419	Total liabilities and net worth		735	419
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a 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	
Camden Cnty NJ Mun Utils Auth	$23,695
Illinois St. G/O College Svgs	24,660
Illinois St. Zero Cpn College	23,544
Total Listed Securities	71,899
IRA Holdings – Account 1	
Abbott Laboratories (ABT)	$3,319
Alkermes Inc (ALKS)	1,183
Allied World Assurance Co Hldgs Ltd (AWH)	873
Amazon Com Inc (AMZN)	6,791
Amgen (AMGN)	3,125
Andarko Petroleum Corp (APC)	5,947
AOL Inc (AOL)	172
Applied Materials Inc Delaware (AMAT)	3,783
Autodesk Inc (ADSK)	1,759
Baker Hughes (BHI)	1,881
Bank of America Corp (BAC)	4,267
Barrick Gold Corp CAD (ABX)	1,242
Bed Bath & Beyond (BBBY)	3,072
Berkshire Hathaway Class B	3,580
Biogen Idec Inc (BIIB)	7,073
Boeing Co (BA)	2,237
Broadcom Corp Cl A (BRCM)	804
Cablevision NY Group Cl A	4,082
Celgene Corp (CELG)	654
Chevron Corp (CVX)	1,113
Chubb Corp (CB)	4,008
Cisco Sys Inc (CSCO)	7,778
Citrix Systems Inc (CTXS)	1,025
Coca-Cola Co (KO)	3,848
Comcast Corp Cl A –SPL (CMCSK)	5,090
Comerica Inc (CMA)	566
Consolidated Edison (ED)	4,305
Coviden Plc Dublin-USC (COV)	2,169
Cree Inc (CREE)	2,990
CVS Caremark Corp (CVS)	1,881
Directv Cl A (DTV)	3,961
Discovery Communication Inc Ser C (DISCK)	832
Discovery Communication Inc Ser A (DISCA)	985
Dolby Laboratories Inc (DLB)	1,742
Dover Corp (DOV)	892
Dreyfus Money Mark Instruments (#DMM)	16,527

66720.735

E I Du Pont De Nemours & Co (DD)	2,158
East West Bancorp Inc (EWBC)	65
EBay Inc (EBAY)	4,745
Electronic Arts (ERTS)	1,980
Emerson Electric Co (EMR)	3,209
Ericsson L M Tel Co Cl B ADR New (ERIC)	802
Expedia Inc (EXPE)	3,524
Exxon Mobil Corp (XOM)	2,427
Flour Corp New (FLR)	1,832
Forest Laboratories Inc (FRX)	2,994
Franklin Resources Inc (BEN)	994
Freeport McMoran Copper & Gold Cl b (FCX)	3,016
Gamco Investors Inc (GBL)	421
Gap Inc Delaware (GPS)	1,976
General Electric Co (GE)	2,669
Genzyme Corp (GENZ)	2,445
Google Inc Class A (GOOG)	1,929
Home Depot Inc (HD)	10,254
Honeywell Intl Inc (HON)	2,763
Intel Corp (INTC)	5,567
Intl Business Machines Corp (IBM)	2,256
Jacobs Engineering Group Inc (JEC)	251
Johnson & Johnson (JNJ)	7,302
JP Morgan Chase & Co (JPM)	5,144
Juniper Networks Inc (JNPR)	2,896
Kraft Foods Inc Class A (KFT)	2,189
L3 Communications Hldgs Inc (LLL)	4,166
Lasalle Hotel Pptys SBI (LHO)	768
Lawson Software Inc New (LWSN)	951
Legg Mason Clearbridge Agg Growth (SHRAX)	17,281
Liberty Global Inc Class A (LBTYA)	430
Liberty Global Inc Ser C (LBTYK)	526
Liberty Media Corp Starz Ser A (LSTZA)	513
Liberty Media Hldg Corp Ser A (LCAPA)	1,789
Liberty Media Hldg Interactive Ser A (LINTA)	3,013
Madison Square Garden Inc (MSG)	892
McDermott Intl Inc (MDR)	451
McKesson Corp (MCK)	2,060
Merck & Co Inc New (MRK)	639
Microsoft Corp (MSFT)	6,697
Murphy Oil Corp (MUR)	308
NASDAQ IMX Group Inc (NDAQ)	1,500
National Oilwell Varco Inc (NOV)	734
Novartis AG ADR (NVS)	3,610
NovellUS Sys Inc (NVLS)	2,497
Nucor Corp (NUE)	1,516
Nvidia Corp (NVDA)	2,153

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00812 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.736

Paccar Inc Del (PCAR)	1,200
Pall Corp (PLL)	2,535
Penske Automotive Group Inc (PAG)	454
Pepsico Inc (PEP)	3,481
Pfizer Inc (PFE)	4,789
Procter & Gamble Co (PG)	3,676
Qualcomm Inc (QCOM)	1,438
Raytheon Company New (RTN)	4,000
Robert Half International Inc (RHI)	436
Roche HldgLtd Spon ADR (RHHBY)	1,358
Sandisk Corp (SNDK)	3,640
Schlumberger Ltd (SLB)	1,187
Schwab Charles Corp (SCHW)	1,648
Seagate Technology (STX)	2,291
Sears Holdings Corp (SHLD)	3,559
Simpson Mfg Co Inc (SSD)	1,007
State Street Corp (STT)	1,961
Synovus Financial Corp (SNV)	182
Taiwan Semiconductor Mfg Co Ltd ADR (TSM)	2,852
Texas Instruments Inc (TXN)	7,353
Time Warner Cable Inc (TWC)	1,171
Time Warner Inc (TWX)	2,803
Transocean Ltd Switzerland New (RIG)	1,102
Tutor Perini Corp (TPC)	410
Tyco Electronics Ltd (TEL)	1,970
Tyco Itl Ltd CHF (TYC)	1,951
Unilever PLC Spons ADR New (UL)	3,060
United Parcel Service Cl B (UPS)	3,452
United Health Group Inc (UNH)	3,852
Varian Semiconductor Equip Assocs (VSEA)	460
Verigy Ltd (VRGY)	604
Verizon Communications (VZ)	1,800
Vertex Pharmaceuticals Inc (VRTX)	519
Vodafone Group PLC Spons	2,138
Wal-Mart Stores Inc (WMT)	3,326
Walt Disney Co (DIS)	14,207
Weatherford International	3,322
Weyerhaeuser Co (WY)	2,349
Williams Sonoma Inc (WSM)	1,190
Total IRA Holdings – Account 1	342,601

IRA Holdings – Account 2	
Bank Deposit Program - Cash Account	$1,048
Consolidated Edison Inc (ED)	4,372
Legg Mason Large Cap Growth Cl A (SBLGX)	3,207
Total IRA Holdings – Account 2	8,628

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00813 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.737

AFFIDAVIT

I, **JAMES EDWARD SHADID**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6-4-10
(DATE)

James E Shadid
(NAME)

Emily Nelms
(NOTARY)

OFFICIAL SEAL
EMILY NELMS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:04/20/14

STATEMENT OF JUDGE SUE E. MYERSCOUGH, NOMINATED TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

Judge MYERSCOUGH. Thank you, Chairman. Thank you for presiding today and thank you for the recommendation for this position, as well as Senator Burris. I want to thank the Committee members for being here today and for their thorough consideration. I'd also like to thank their staff members, because I know they do quite a bit of work themselves.

I'd especially like to thank the President for the nomination and the faith he's put in me and the faith that you've put in me for so many years.

And at this time, I'd like to introduce my family and some of my friends who are attending. My parents were unable to attend, as was my father-in-law, due to health reasons, unfortunately. They send their regrets.

My husband of 35 years is here, Bob Mueller; my two daughters, Sarah and Lauren; my older brother, Michael Myerscough; a colleague of yours from many years ago, John Keith; and, as well, Tom Lamont, who is the Assistant Secretary of the Army now; and, John Michelich, a long-time Springfield resident who has moved out here; and, Harry Metz.

Thank you.

[The biographical information follows.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00815 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Sue Ellen Myerscough

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Central District of Illinois

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   500 South Sixth Street
   Springfield, Illinois 62701

4. **Birthplace**: State year and place of birth.

   1951; Springfield, Illinois

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1977 to 1980, Southern Illinois University School of Law; J.D., 1980
   1976 to 1977, Southern Illinois University; no degree (graduate study)
   1974 to 1975, University of Chicago; no degree (graduate study)
   1969 to 1973, Southern Illinois University; B.A. (with Honors), 1973

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1998 to Present
   Illinois Appellate Court, Fourth District
   201 West Monroe Street
   Springfield, Illinois 62794
   Appellate Court Justice

66720.739

1987 to 1998
Circuit Court for Seventh Judicial Circuit of Illinois
Sangamon County Complex
200 South Ninth Street
Springfield, Illinois 62701
Circuit Judge (1990 – 1998)
Associate Judge (1987 – 1990)

1985 to 1987
Hinshaw, Culbertson, Moelmann, Hoban & Fuller
400 South Ninth Street, Suite 200
Springfield, Illinois 62701
Associate Attorney

1981 to 1985
Giffin, Winning, Lindner, Newkirk, Cohen & Bodewes P.C.
One West Old State Capitol Plaza
Springfield, Illinois 62701
Associate Attorney

1980 to 1981
United States District Court for the Central District of Illinois
338 United States Courthouse
201 South Vine Street
Urbana, Illinois 61802
Law Clerk to the Honorable Judge Harold A. Baker

1980
University of Illinois
601 East John St.
Champaign, Illinois 61820
Barbri Law Review Course Facilitator

1978 to 1980
Southern Illinois University School of Law
1400 Douglas Drive
Carbondale, Illinois 62901
Teaching & Research Assistant, Law School (1978 – 1980)
Teaching & Research Assistant, Department of English (1975 – 1977)

1975 to 1976
Springfield Public Schools District 186
1900 West Monroe Street
Springfield, Illinois 62704
Substitute Teacher & Home School Teacher

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00817 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.740

1976
Billings Hospital
950 East 59th Street
Chicago, Illinois 60637
Mail Clerk

1973 to 1976 (intermittent)
Murphy Rug Cleaners
200 So. Ninth Street
Springfield, Illinois 62701
Secretary, Accountant, Cleaner, Rug Binder and Serger

1975
St. Monica's Maternity Center
109 East Lawrence Avenue
Springfield, Illinois 62702
Teacher (part-time)

1973 to 1974
C.E.S. Hastings
rue Robert le Magnifique
Caen, France
Cross-Cultural Exchange Teacher

1973
Chinese Restaurant
Elgin, Illinois 60120
Server

Summer 1973
Illinois State Fair
801 E. Sangamon Avenue
State Fairgrounds
Springfield, Illinois 62794
Youth Activities Director

Other Affiliations (uncompensated)

1994 to Present
Southern Illinois University School of Medicine
Department of Medical Humanities
801 North Rutledge
Springfield, Illinois 62702
Adjunct Associate Professor

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00818 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.741

2003 to 2008
Illinois Institute for Continuing Legal Education
2895 West Jefferson
Springfield, Illinois 62702
Director

2003 to 2006
Sojourn Shelter and Services, Inc.
1800 Westchester Boulevard
Springfield, Illinois 62704
Director

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I have not registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Women of Influence, Security Bank (2009)
Distinguished Alumni Achievement Award, SIU School of Law (2003)
Charlotte Danstrom Women of Achievement Award: Government, Women in Management National Conference (2003)
Women of Achievement Award: Government, Capitol City Chapter of Women in Management (2003)
Hillary Rodham Clinton Leadership Award, Illinois Democratic Women (2002)
Certificate of Appreciation for Outstanding Dedication and Service, Illinois Democratic County Chairman Association (2002)
Athena Award, Greater Springfield Chamber of Commerce (2002)
Women in Excellence Award, YWCA (2001)
Honorary Member, Central Illinois Women's Bar (2000)
Right Track Truancy Recognition Award, Springfield Public School Dist. No. 186 (1999)
Distinguished Service Award, Sangamon County Probation and Court Services (1998)
Distinguished Service Award, Seventh Judicial Circuit (1998)
Distinguished Service Award, Illinois Probation Association (1996)
Order of Barristers Award (1980)
President, Moot Court, SIU Law School (1979 – 1980)
Articles Editor, SIU Law Journal (1979 – 1980)
Illinois State Teachers Scholarship (1969 – 1973)
President's Scholar, SIU (1969 – 1973)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00819 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.742

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Appellate Lawyers Association
American Trial Lawyers Association
Central Illinois Pro Bono Committee
Central Illinois Women's Bar Association
Conference of Chief Judges (1996 – 1998)
Government Bar Association
Illinois Judicial Conference
    Committee on Discovery Procedures (2009 – present)
Illinois Judges Association
    Convention Committee (approximately 1992)
    Disciplinary Committee (approximately 1994 – 1995)
    Illinois Judicial Ethics Committee (2002 – 2010)
Illinois State Bar Association
    Health Care Council (approximately 1992 – 1995)
    Intergovernmental Cooperation Committee (approximately 1985 – 1988)
    Juvenile Committee (approximately 1990 – 1991)
    Lincoln Essay Committee (1994, 1999, 2000, 2001)
    Medical/Legal Committee (approximately 1985 – 1988)
Illinois State Bar Foundation Selection Committee (approximately 2008)
Illinois Supreme Court
    Editor, Civil Law Bench Book (2009 – present)
    Alternate Member, Courts Commission (2005 – present)
    Facilitator, Committee on Judicial Performance Evaluation (1995 – present)
    Special Committee to Study Courtroom and Judicial Security (2002 – present)
Illinois Trial Lawyers Association
Lincoln-Douglas Inn of Court
Sangamon County Bar Association
    Local Rules, Ethics, Courthouse Committee (1990 – 1997 & 1987 – 1995)
Vermilion County Bar Association

10. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

    Illinois, 1980

    There has been no lapse in membership.

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00820 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.743

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Seventh Circuit, 1999
United States District Court for the Central District of Illinois, 1980
United States District Court for the Southern District of Illinois, 1984

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Copley First Citizen Panel (1995)
Greater Springfield Chamber of Commerce (2001 – 2002)
Horace Mann Scholarships Committee (1997)
Illini Country Club (1982 – present)
SIU School of Law Board of Visitors (2001 – present)
Springfield Art Association (approximately 1982 – 1988)
Springfield Police Chief Executive Review Committee (2003)
Women in Management (2000 – 2007)
YWCA Springfield, Illinois (1995 – 1998)
YMCA Springfield, Illinois (1984 – 2008)
YMCA Danville, Illinois (1980 – 1981)

During the 1970s, I engaged in occasional fundraising for the American Heart Association and the American Cancer Society. I do not know if these organizations considered me a member. Since 1981, I have been active as a volunteer and as a director (2003 – 2006) of Sojurn Shelter and Services, Inc., although it is not a membership organization.

Over the years, I have made other charitable contributions to organizations that may have considered me a member solely by virtue of those contributions. In recent years, these have included the American Diabetes Association, Animal Protective League, Benld Adopt-a-Pet, Boy Scouts Local Troop, Catholic Charities, the Children's Miracle Network, Girl Scouts Local Troop, Minnie O'Beirne Crisis Center, the Multiple Sclerosis Society, the Parent Place, Planned Parenthood, Ronald McDonald House, St. Johns' Breadline, the Salvation Army, Simmons Cancer Institute, the Springfield Ballet Company, Springfield Parks Foundation, United Cerebral Palsy Association, United Way, and the YMCA Christmas Camp.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00821 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.744

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

My husband joined Illini Country Club in 1982 and I became a member in my own right when, several years ago, spouses of then-current members were themselves made members. Many years ago, race, sex and religion were bars to membership. Illini Country Club previously had a men's only grill and on three mornings each week had men's only tee times. My husband and I voiced our objections repeatedly thereto, and these policies were changed in 2002. My husband is also a member of the Sangamon Club, a dining establishment that I use for court meetings. Many years ago, women were not allowed to be members or to dine on the main floor of the restaurant; however, that Club does not so discriminate today. I am not aware of any other discrimination, past or present, by the organizations I have listed.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

"Service Contracts - A Subject for State or Federal Regulation: Do Consumers Need Protection from the Service Contract Industry?" 4 S. Ill. U. L.J. 587 (1979)

As a candidate for the Illinois Supreme Court in 2002, my campaign had a website, www.justicesuemyerscough.com. While the website is no longer in operation, an archived screenshot is available at: http://web.archive.org/web/20021209192416/http://www.justicesuemyerscough.com/index.html.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I recall. Some of the court and bar association committees on which I have served have occasionally made court administration and rules

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00822 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.745

recommendations or suggestions of various levels of formality, but I have been unable to find or remember any written reports of such recommendations made during my time on a committee.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I searched my recollection, my files, and Internet sources to identify the following instances in which I gave testimony to public bodies, though there may be other occasions that I have been unable to identify.

In approximately 2009, I appeared before an Illinois Senate Committee on court security issues. I have no written testimony or other transcript.

In approximately 2008, I appeared before an Illinois House Committee on child custody issues. Draft testimony attached.

I testified before the Illinois State Legislature in Spring of 1997 regarding the need for more money for local probation services in the Juvenile Justice Reform Act. I have no written testimony or other transcript.

In the early 1990s, I testified to the Springfield City Council on a local zoning issue. A neighbor was seeking to rezone land nearby my home for industrial use. I do not have any record of my testimony.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and databases to locate same. I have also contacted the agencies and bar associations and asked them to search as well. I have located the materials attached as 12d, but there are some which I have not kept of record. I keep very few copies due to storage limitations and have reused many of these speeches on several occasions.

May 2010	Continuing Education of the Illinois Association of Court Clerks, Spring Conference, Crowne Plaza Hotel, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00823 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.746

May 2010	Guest Presenter, IACC Spring Training 2010, Springfield, IL (no notes)
April 2010	Moderator, Appellate Lawyers Association, Annual Luncheon with the Justices of the Appellate Court, Fourth District, Springfield, IL (no notes)
October 2009	Illinois Judicial Conference, Anatomy of an Emergency Admission Proceeding under Chapter 3, Article VI, AOIC, 3101 Old Jacksonville Road, Springfield, IL 62704 (notes attached)
March 2009	Appellate Lawyers Association Seminar, Appellate Practice, 1901 North Roselle Road, Schaumburg, IL 60195 (notes attached)
January 2009	Leadership Springfield, Appellate Practice, 3 South Old State Capitol Plaza, Springfield, IL 62701
2009	Removing Judges from the Internet, 2009 (notes attached)
November 2008	Illinois Bankers Association Women in Banking Conference, Professionalism, 524 South Second Street, Suite 600, Springfield, IL 62701 (notes attached)
April 2008	Keynote Address Speaker, Illinois State University Pre-Law program's Annual Pre-Law Awards Banquet, Normal, IL (notes attached)
April 2008	Illinois Defense Counsel Conference, Appeals, Ethics, P.O. Box 3144, Springfield, IL 62708-3144 (no notes)
April 2008	Featured Speaker, Illinois Association of Defense Trial Counsel, Women's Bar Association of Illinois and the Black Women Lawyers Association, What Women Lawyers Want (And Need), University Club of Chicago, Chicago, IL 60603. (notes and program attached)
March 2008	Judicial Education Conference, Ethics, AOIC, 3101 Old Jacksonville Road, Springfield, IL 62704 (notes and program attached)
February 2008	Illinois Trial Lawyers Association Seminar, Perfecting an Appeal, 401 West Edwards, P.O. Box 5000, Springfield, IL 62705 (notes attached)
February 2008	Attorney General Springfield, IL Preserving the Record on Appeal Seminar, 500 South Second Street, Springfield, IL 62706 (notes attached)
January 2008	Judicial Education Conference, Ethics, AOIC, Chicago, IL (same notes and program from March 2008)
January 2008	Illinois Women in Leadership Campaign, P.O. Box 5612, Springfield, IL 62705-5612 (no notes)
November 2007	A Day in the Life of a New Judge on the Bench (notes attached)
October 2007	Attorney General's Appellate Court Process Seminar, Springfield, IL (notes attached)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00824 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.747

September 2007	Workers' Compensation Arbitrators and Commissioners Ethics Seminar, 100 West Randolph, Suite 8-200, Chicago, IL 60601 (notes attached)
September 2007	Appellate Court Conference, Case Law Update, Oak Brook, IL (no notes)
April 2007	Memorial Speech for Government Workers, Capital Rotunda, Springfield, IL 62701 (notes attached)
March 2007	Frontier's International, Courts, P.O. Box 3522, Springfield, IL 62708 (no notes)
March 2007	Central Illinois Women's Bar Association/Government Bar Association Pro Bono Training, 1307 South 7th, Springfield, IL 62703 (no notes)
March 2007	Moot Court Competition, Illinois Appellate Lawyers Association, Chicago, IL (no notes)
February 2007	Moot Court Competition, University of Illinois, Champaign-Urbana, IL (no notes)
2007	Illinois Democrats Convention Speech (notes attached)
2007	Round Table Discussion with Sangamon County Officers (notes attached)
November 2006	Mentoring Women in Government Seminar, Springfield, IL (no notes)
September 2006	Illinois Bankers Association, Women in Banking Conference, Professionalism, Springfield, IL (notes attached)
April 2006	Illinois State Bar Association Seminar, Appeals, Belleville, IL (notes attached)
November 2005	Appellate Judges Association Conference, Oak Brook, IL (no notes)
July 2005	Grade School Mock Trial, Sangamon County Courthouse, Springfield, IL (no notes)
June 2005	Illinois Department of Corrections, Sentencing, 1301 Concordia Court, Springfield, IL 62702 (no notes)
May 2005	Court Disability Training, Springfield, IL (no notes)
April 2005	University of Illinois School of Law, Frederick Green Moot Court Competition Judge, 504 East Pennsylvania Avenue, Champaign, IL 61820 (no notes)
March 2005	Adjusters Association of Illinois Meeting, Appeals, P.O. Box 6186, Springfield, IL 62708 (no notes)
2005	State-Journal Register's Copley First Citizen Award Presentation, One Copley Plaza, P.O. Box 219, Springfield, IL 62705 (notes attached)
1994 to 2006	Mock Trial for Southern Illinois University School of Medicine, 801 North Rutledge, Springfield, IL 62707 (no notes)
June 2004	Obama Senate Headquarters, Judicial Campaigns, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00825 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.748

May 2004	Injunctions From Start to Finish for Judges, AOIC, Springfield, IL (no notes)
March 2004	High School Mock Trial, Illinois State Bar Association, Springfield, IL (no notes)
February 2004	Illinois Trial Lawyers Association, An Appellate Perspective: A View From the Ivory Tower, Springfield, IL (notes attached)
January 2004	Girl Scouts "Dreams to Reality" Workshop, Springfield, IL (no notes)
2004	Swearing-in Speech for Judge Patrick Londrigan (notes attached)
2004	Security Bank's Women of Influence Speech (notes attached)
October 2003	Southern Illinois University Law School Moot Court Competition, Carbondale, IL (no notes)
October 2003	Judicial Conference, Evidence, AOIC, Chicago, IL (no notes)
September 2003	Restorative Justice Seminar, Illinois Balanced and Restorative Justice Initiative, 361 North Railroad Avenue, Suite A, Paxton, IL 60957 (no notes)
May 2003	Southern Illinois University School of Law Graduation Class of 2003, Commencement Speaker, Carbondale, IL (notes and program attached)
May 2003	Law Day, University of Illinois, Springfield, IL (notes attached)
March 2003	Springfield Commission, International Visitor Program--Government Delegates from the Gangwon Province in Korea, Court System, Springfield, IL (no notes)
March 2003	Illinois State Police Recruit Class 400-77 Graduation Ceremony, Springfield, IL (notes attached)
March 2003	Athena Award Ceremony, Award Winner Acceptance, Springfield, IL (notes attached)
February 2003	Seminar: Injunctions from Start to Finish, AOIC, Springfield, IL (no notes)
February 2003	Mock Trial, Southern Illinois University School of Medicine, Springfield, IL (no notes)
January 2003	Judicial Conference of Illinois, Committee on Criminal Law & Probation Administration, Chicago, IL (no notes)
2003	Fundraiser, Champaign County (notes attached)
2003	Campaign Reform Speech (notes attached)
2003	Evening Democrats Club, Peoria, IL (notes attached)
December 2002	Illinois State Bar Midyear Annual Luncheon, Becoming a Judge, Chicago, IL (notes attached)
November 2002	Secretary of State Police Annual Meeting, Fourth Amendment, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00826 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.749

October 2002	Candidate Panelist, IL State Candidates Forum 2002, Urbana, IL (no notes)
October 2002	Radio appearance on "Let's Talk Law," WMAY. Springfield, IL (no notes or transcript)
September 2002	Illinois Association of Defense Trial Counsel, Appeals, Champaign-Urbana, IL (no notes)
August 2002	Democratic Fundraiser/McClean County Democrats event, Normal IL (notes attached)
July 2002	Illinois Chapter of the National Emergency Number Association: How Dispatch Can Help the Successful Prosecution of Criminal Cases, P.O. Box 271, Secor, IL 61771 (notes and program attached)
June 2002	Government Bar Association Luncheon (notes and program attached)
May 2002	Campaign Fundraiser, Attorneys for Justice Sue Myerscough, Springfield, IL (letter attached)
April 2002	Springfield Kiwanis Club, Appeals, Springfield, IL www.springfieldkiwanis.org (notes attached)
April 2002	American Business Club Board of Governors, Appeals, Springfield, IL P.O. Box 1273, Springfield, IL 62705 (no notes)
March 2002	Robert Morris College, Appeals, 3101 Montvale Drive, Springfield, IL 62704 (no notes)
March 2002	Central Illinois Women's Bar Association, Appeals, Springfield, IL (no notes)
March 2002	Springfield Rotary, Appeals, Springfield, IL (no notes)
March 2002	State's Attorneys Appellate Prosecutor's 2nd Basic Trial Advocacy Program, Springfield, IL (notes attached)
March 2002	Worker's Memorial Dedication, State Capitol, Springfield, IL (no notes)
March 2002	Robert Morris College: Estate, Wills & Trusts, 3101 Montvale Drive, Springfield, IL 62704 (no notes)
March 2002	Springfield North End Improvement Association Candidate Forum, Springfield, IL (no notes)
February 2002	"Nuts and Bolts of Appellate Practice" Appellate Lawyers Program, Bloomington, IL (no notes)
February 2002	Public forum regarding role of judges in proposing new laws, Champaign, IL (no notes)
2002	Appearance on Talk Show, RFD 111, Bloomington, IL (notes attached)
2002	State Fair Speech, Democrat/Republican Day, Springfield, IL (notes attached)
2002	News Conference Announcing Candidacy for Illinois Supreme Court (notes attached)
2002	League of Women Voters, Debate in Danville, IL (notes attached)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00827 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.750

2002	Presentation to Community Members, Sangamon County, IL (notes attached)
2002	Truman Dinner Speech, Jacksonville, IL (notes attached)
2002	Women's Bar Association Luncheon, IL (notes attached)
2002	Illinois Political Action Committee for Education (notes attached)
2002	Fundraiser, Champaign-Urbana (notes attached)
2002	Cass County Fundraiser (notes attached)
2002	Democrat Fall Dinner, Champaign County, IL (notes attached)
2002	Fundraiser for Senator Vince Demuzio, Macoupin County, IL (notes attached)
2002	League of Women Voters, Women in Politics in the 21st Century, IL (notes attached)
2002	Public Statement regarding Negative Ads during Supreme Court Campaign (notes attached)
2002	Meeting with the Illinois State Medical Society (notes attached)
2002	Speech to Veterans of Foreign Wars, IL (notes attached)
2002	Campaign Speech, Champaign Public Defenders (notes attached)
2002	State Farm Campaign Speech (notes attached)
2002 (appx)	Award Acceptance on behalf of Senator Lisa Madigan, National Association of the Mentally Ill, IL (notes attached)
1990 to 2009	International Visitor Program sponsored by the U.S. Department of State, 109 North 7th Street, Springfield, IL 62701 (no notes)
December 2001	Campaign Announcement, Illinois State Fair (notes and most relevant press coverage attached)
November 2001	Democrat Party of Pike County Fall Fundraiser, Pike County Democrat Central Committee, Pittsfield, IL (notes attached)
October 2001	Public Defenders Luncheon (notes attached)
February 2001	"Justice of the Fourth District of the Appellate Court." Sangamon County Historical Society, Springfield, IL (notes attached)
2001	Midwest Women's Caucus for Political Science: Women in Public Office: Election Lessons Learned, Springfield, IL (no notes)
2001	Local Police Association's Annual Meeting, Appeals, Springfield, IL (no notes)
2001	Springfield Rotary, Appeals, Springfield, IL (no notes)
2000 to 2009	Central Illinois Women's Bar Association's Mock Trial for Take Your Child to Work Day, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00828 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.751

2000 to 2006, 1987	Illinois State Bar Association's High School Mock Trial Program, Springfield, IL (no notes)
1996 to present	Judicial Performance Evaluations for the Illinois Supreme Court, Administrative Office of Courts, Springfield, IL (no notes)
October 2000	Sangamon County Juvenile Center Ceremony, Springfield, IL (no notes)
2000	Illinois Center for Violence Prevention: Law Enforcement Approaches to Violence Prevention, Springfield, IL www.icvp.org (no notes)
2000	Illinois Judicial Conference: Hearsay and Exceptions, Chicago, IL (notes attached)
2000	Illinois Women in Government: Juvenile Justice, Springfield, IL (no notes)
2000	Central Illinois Women's Bar, Honorary Member, Acceptance Speech (notes attached)
2000 to present	Law School Externs, University of Illinois, Southern Illinois University, Chicago-Kent, Ave Maria, University of Dayton, St. Louis University (no notes)
1999 to 2001	University of Illinois School of Law Moot Court Competition, Champaign-Urbana, IL (no notes)
1999 to 2000	Mayor Karen Hasara's Regional Leadership 2020 (now defunct), Springfield, IL (no notes)
1999 to 2000	Governor's Youth Council Criteria Task Force (now defunct), Springfield, IL (no notes)
1996 to 2001	Chief Judges' Conference, Juvenile Committee, Administrative Office of Courts, Chicago, IL (no notes)
May 1999	Speaker, ABA Law Day, Quincy, IL (notes attached)
1999	Junior Police Academy, Class of 1999, 200 North 11th Street, Springfield, Illinois Springfield, IL 62703 (no notes)
1999	Speaker, University of Illinois-Springfield, Take Our Daughters to Work Day, Springfield, IL (no notes)
October 1998	Press Conference regarding new sex offender program, Springfield, IL (no notes)
October 1998	McLean County League of Women Voters, Debate, Bloomington, IL (notes attached)
September 1998	Radio Interview, The Afternoon Magazine with Celeste Quinn, available at: http://will.illinois.edu/afternoonmagazine/interview/aftmag980914/ (no notes or transcript)
July 1998	Co-host, Roundtable Discussion on School Violence, Springfield IL (no notes)
May 1998	Symposium on Domestic Violence, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00829 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.752

April 1998	Discussion on the U.S. court system, The People's Law School, IL (no notes)
1998	Distinguished Service Award, Sangamon County Probation, Springfield, IL (no notes)
October 1997	The Illinois Women '97 conference, "Celebrate the Difference," Springfield, IL (no notes)
1996 to 1998	Springfield Greater Chamber of Commerce: Leadership Springfield, Court System, 3 South Old State Capitol Plaza, Springfield, IL 62701 (no notes)
1996	Distinguished Service Award, Illinois Probation Association, Springfield, IL (no notes)
1996	Illinois Institute for Continuing Legal Education course, "Getting the Most Out of Opinion Witnesses", IL (no notes)
1995 to 1996	SIU Law School Interns, Springfield, IL (no notes)
1990 to 1995 and 2005 to 2007	Sponsor Illinois Legislative Interns, Springfield, IL (no notes)
July 1994	Introduction of Judge Robert Hall at Swearing In Ceremony, Springfield, IL (no notes)
1994	Southern Illinois University Medical School: A Comparison of Federal and State Courts, Springfield, IL (no notes)
1994	Sangamon County Bar Association Young Lawyers Division: Law Related Education for Our Children, 400 South 9th Street, Suite 200, Springfield, IL 62701 (no notes)
1994	IICLE Seminar: Using Expert Witnesses, 2395 West Jefferson, Springfield, IL 62704 (no notes)
1994	Co-Sponsor ISBA Seminar: Incompetency, Insanity, and Mental Disability, Chicago, IL (no notes)
1993, 1980s	Supervisor Sangamon State Paralegals (now UIS), One University Plaza, Springfield, IL 62703 (no notes)
1993	Southern Illinois University Law School, National Health Law Moot Court Competition, Carbondale, IL (no notes)
1992	Moderator and Co-Sponsor ISBA Seminar: The Child and the Law, Chicago, IL (no notes)
1991	Illinois Judicial Conference; Medical/Legal Issues, AOIC, Chicago, IL (no notes)
1990 to 1991	Lincoln Land Police Training Academy: Trial Testimony, 5250 Shepherd Road, Springfield, IL 62794 (no notes)
1990 to 1994	Inns of Court Presentations: Jury Selection, Use of Media in Trial, Stress Reduction, Re-enactment of A. Lincoln's Peachy Quinn Harrison Trial, Springfield, IL (no notes)
1990	Implemented "Children First" Program in Sangamon County Courthouse, Springfield, IL (no notes)
1988 to 1998	Illinois Legislative Interns Mock Trials, Springfield, IL (no notes)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00830 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.753

1989 to 2008	Southern Illinois University School of Law Moot Court Competitions Judge, Carbondale, IL (no notes)
1987 to 1998	Founder and Coordinator Court/Jail Program with ISBA and local school districts: school seminars and trials, courthouse and jail tours, student mock trials, sponsor of school field trips, Springfield, IL (no notes)
1987 to 2010	Speaker on legal issues at various civic organizations such as Women in Government, National Association of Businesswomen, Elks, Lions, Breakfast Optimists, AFSCME, American Legion, Springfield Junior League, American Business Club, League of Women Voters, Police Training Institute, Illinois State Police Graduation and other organizations within the 30 counties of the Fourth District Appellate Court (no notes); Moot court Team (notes attached); System of Justice in Charleston, IL (notes attached)

CLE Presentations (no notes)

October 2009	Illinois Judicial Conference, Mental Health Seminar, AOIC, 3101 Old Jacksonville Road, Springfield, IL 62704
March 2009	Appellate Lawyers Association Seminar, Appellate Practice, 1901 North Roselle Road, Schaumburg, IL 60195
April 2008	Illinois Defense Counsel Conference, Appeals, Ethics, P.O. Box 3144, Springfield, IL 62708-3144
January 2008	Judicial Education Conference, Ethics, AOIC, Chicago, IL
February 2008	Attorney General Springfield, IL Preserving the Record on Appeal Seminar, 500 South Second Street, Springfield, IL 62706
February 2008	Illinois Trial Lawyers Association Seminar, Perfecting an Appeal, 401 West Edwards, P.O. Box 5000, Springfield, IL 62705
March 2008	Judicial Education Conference, Ethics, AOIC, 3101 Old Jacksonville Road, Springfield, IL 62704
October 2007	Attorney General's Appellate Court Process Seminar, Springfield, IL
September 2007	Workers' Compensation Arbitrators and Commissioners Ethics Seminar, 100 West Randolph, Suite 8-200, Chicago, IL 60601
September 2007	Appellate Court Conference, Case Law Update, Oak Brook, IL
March 2007	Central Illinois Women's Bar Association/Government Bar Association Pro Bono Training, 1307 South 7th, Springfield, IL 62703
April 2006	Illinois State Bar Association Seminar, Appeals, Belleville, IL

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00831 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.754

November 2005	Appellate Judges Association Conference, Oak Brook, IL
April 2005	University of Illinois School of Law, Frederick Green Moot Court Competition Judge, 504 East Pennsylvania Avenue, Champaign, IL 61820
May 2004	Injunctions From Start to Finish for Judges, AOIC, Springfield, IL
February 2004	Illinois Trial Lawyers Association, Appeals, Springfield, IL
October 2003	Judicial Conference, Evidence, AOIC, Chicago, IL
September 2003	Restorative Justice Seminar, Illinois Balanced and Restorative Justice Initiative, 361 North Railroad Avenue, Suite A, Paxton, IL 60957
February 2003	Seminar: Injunctions from Start to Finish, AOIC, Springfield, IL
January 2003	Judicial Conference of Illinois, Committee on Criminal Law & Probation Administration, Chicago, IL
September 2002	Illinois Association of Defense Trial Counsel, Appeals, Champaign-Urbana, IL
July 2002	Illinois Chapter of the National Emergency Number Association: Use of Dispatch in Criminal Cases, P.O. Box 271, Secor, IL 61771
March 2002	Robert Morris College, Appeals, 3101 Montvale Drive, Springfield, IL 62704
March 2002	Central Illinois Women's Bar Association, Appeals, Springfield, IL
March 2002	State's Attorneys Appellate Prosecutor's 2nd Basic Trial Advocacy Program, Springfield, IL
March 2002	Robert Morris College: Estate, Wills & Trusts, 3101 Montvale Drive, Springfield, IL 62704
February 2002	"Nuts and Bolts of Appellate Practice" Appellate Lawyers Program, Bloomington, IL
2000	Illinois Judicial Conference: Hearsay Evidence, Peoria, IL
2000 to 2010	Law School Externs, University of Illinois, Southern Illinois University, Chicago-Kent, Ave Maria, University of Dayton, St. Louis University
1994	Southern Illinois University Medical School: A Comparison of Federal and State Courts, Springfield, IL
1994	Sangamon County Bar Association Young Lawyers Division: Law Related Education for Our Children, 400 South 9th Street, Suite 200, Springfield, IL 62701
1994	IICLE Seminar: Using Expert Witnesses, 2395 West Jefferson, Springfield, IL 62704
1994	Co-Sponsor ISBA Seminar: Incompetency, Insanity, and Mental Disability, Chicago, IL
1992	Moderator and Co-Sponsor ISBA Seminar: The Child and the Law, Chicago, IL

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00832 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.755

1991	Illinois Judicial Conference; Medical/Legal Issues, AOIC, Chicago, IL
1990 to 1991	Lincoln Land Police Training Academy: Trial Testimony, 5250 Shepherd Road, Springfield, IL 62794
1990 to1994	Inns of Court Presentations: Jury Selection, Use of Media in Trial, Stress Reduction, Re-enactment of A. Lincoln's Peachy Quinn Harrison Trial, Springfield, IL

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have been interviewed many times since becoming a judge, including as a candidate for election or retention five times in the past two decades. I have compiled the following list of items, but there may be others I have been unable to identify. Copies of all clips are supplied.

"Logan County Circuit Clerk to Work for Appellate Court," Springfield News-Leader, Sept. 3, 2009
"Bill Would Protect Judge's Home Addresses and Phone Numbers," Chicago Daily Law Bulletin, March 11, 2009
"With Versace on Bench, Who will Dems Turn To?" The Pantagraph, Dec. 11, 2007
"Democrats Looks to Replace Versace," The Pantagraph, Dec. 10, 2007
"Democrats Bow Out of Run for LaHood's House Seat," National Journal CongressDaily, Sept. 5, 2007
"Cough it Up," National Journal's House Race Hotline, Aug. 30, 2007
"Myerscough to Stay on the Bench; Decides Not to Pursue Bid for LaHood's Seat in Congress," The State Journal-Register, Aug. 29, 2007
"A Nagging Myerscough," National Journal's House Race Hotline, Aug. 14, 2007
"Myerscough Considers Run," The Frontrunner, Aug. 13, 2007
"Myerscough Talks With Democratic Recruiters; Encouraged to Run for LaHood's Seat in Congress," The State Journal-Register, Aug. 11, 2007
"Springfield Judge Encouraged to Seek LaHood's Seat," The Courier, Aug. 11, 2007
"Judge Considers Run for Congress; Myerscough Urged to Replace LaHood," The State Journal-Register, Aug. 10, 2007
"Judge Give Consideration to Running for LaHood's Seat," National Journal's CongressDaily, Aug. 10, 2007
"A 'Student of the Law,' He Relishes a Debate," Chicago Daily Law Bulletin, Aug. 8, 2007
"Free Legal Program Assists Sojourn After Losing Grant; But More Volunteer Attorneys Needed," The State Journal-Register, June 11, 2007
"Governor's Office Kept Clout List; Most on Patronage Roster Wound Up on State Payroll," Chicago Sun Times, May 17, 2006

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00833 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.756

"Seventh Circuit Judge Sworn In; Myerscough: Londrigan is 'Filling the Footsteps of a Fine Jurist,'" The Springfield State Journal-Register, Dec. 4, 2004
"Tort Reform Group Puts Money Into Race; Influence on Karmeier is Debated," Belleville News Democrat, May 31, 2004
"Reflections on the Journey," The State Journal-Register, Feb. 23, 2003
"News," The Courier, Nov. 6, 2002
"Garman Retains Seat on State's High Court; Veteran Justice Gets Strong Support in Vermilion County," The News-Gazette, Nov. 6, 2002
"Garman Likely the Winner," The Pantagraph, Nov. 6, 2002
"News," The Courier, Nov. 5, 2002
"Illinois High Court Ads Could be Headed to U.S. Supreme Court," Journal Gazette, Nov. 5, 2002
"Election Board Delays Ruling on Garman Ads," The State Journal-Register, Nov. 5, 2002
"Illinois Supreme Court Fourth District – 'Activism' Generates Debate in Garman, Myerscough Race, "The Peoria Journal Star, Nov. 2, 2002
"News," The Courier, Nov. 1, 2002
"Two Complaints Filed Over Ads in Court Race – Request Made to Have Group Disclose Backers," The News-Gazette, Nov. 1, 2002
"Two Women Vie for High Court," Chicago Lawyer, Nov. 1, 2002
"GOP Ads Criticized as Illegal," The Pantagraph, Nov. 1, 2002
"Complaint Alleges Garman Broke Campaign Law," The State Journal-Register, Nov. 1, 2002
"Garman and Myerscough Both 'Highly Recommended,'" The State Journal-Register, Oct. 31, 2002
"Judge Hopefuls Point to Records – Myerscough, Garman Vie for High Court Seat, Election 2002," The News Gazette, Oct. 29, 2002
"Downstate Fight for Top-Court Seat Affects All of State," Chicago Tribune, Oct. 25, 2002
"Bar Association's Demand: Pull Anti-Myerscough Commercial," The State Journal-Register, Oct. 24, 2002
"Supreme Court Candidate Denies Knowing About Ad," The News-Gazette, Oct. 23, 2002
"Myerscough Takes Issue with Third-Party Ad," The State Journal-Register, Oct. 22, 2002
"Outsiders Weigh in on High Court Race Here," Chicago Daily Law Bulletin, Oct. 22, 2002
"Judge Candidate Wants Ads Stopped," The Pantagraph, Oct. 22, 2002
"Supreme Court Candidate Wants Attack Ad Withdrawn," Copley News Service, Oct. 21, 2002
"Illinois Spotlight," Copley News Service, Oct. 21, 2002
"State Court Candidates Visit Vermilion County," The News-Gazette, Oct. 18, 2002
"Candidates' Opinions on Judicial Selection System," The News-Gazette, Oct. 13, 2002

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00834 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.757

"DACC Holds Political Forum – Death Penalty, Other Issues on Candidates' Minds," The News-Gazette, Oct. 2, 2002
"Garman Raps Myerscough for Activism Comment," Copley News Service, Sept. 26, 2002
"Judge Doubts Legality of Moratorium," The Pantagraph, Sept. 20, 2002
"Tort Reform Group Endorses Garman," The State Journal-Register, Sept. 17, 2002
"Legislative Candidates in Favor of Cap on Malpractice Damages," The State Journal-Register, Sept. 11, 2002
"Overheard," The Pantagraph, Aug. 24, 2002
"Candidate Has Unique Tale," The Pantagraph, Aug. 15, 2002
"Daily Digest," The Pantagraph, Aug. 13, 2002
"Dem has the Cash in High Court Race," Chicago Daily Law Bulletin, Aug. 1, 2002
"Gone in a Flash; Man Wanted for Exposing Himself Near Downtown," The State Journal-Register, July 17, 2002
"Steigmann Calls Negative Judicial Rating 'Absurd,'" Copley News Service, Feb. 15, 2002
"Supreme Court Candidates Air Differences at Forum," The News-Gazette, Feb. 8, 2002
"Judicial Hopefuls in Hot Debate – State Supreme Court Candidates Hold Forum," The Peoria Journal Star, Feb. 8, 2002
"Court Candidates Debate Lobbying by Judges," The State Journal-Register, Feb. 8, 2002
"Lobbying, Reform Issues Divide Judicial Candidates," Copley News Service, Feb. 8, 2002
"Hefty Price Expected for GOP Primary," Chicago Daily Law Bulletin, Feb. 1, 2002
"Contrasts and Controversies Mark 4th District Primary," Chicago Lawyer, Feb. 1, 2002
"Myerscough to Run for High Court," The State Journal-Register, Dec. 15, 2001
"Appellate Judge Will Run for Nomination to State Supreme Court; Democrat Will Run in District That Includes Jersey County," St. Louis Post-Dispatch, Dec. 6, 2001
"Candidate Focuses on Child Support – Myerscough Pledges to Improve Laws if on Supreme Court," Herald & Review, Dec. 4, 2001
"Myerscough Announces Candidacy for Illinois Supreme Court," Journal Gazette, Dec. 4, 2001
"Myerscough a Candidate for State High Court," The News-Gazette, Dec. 4, 2001
"Myerscough Running for Seat on High Court Bench," Chicago Daily Law Bulletin, Dec. 4, 2001
"Shirts Shout Slogans – Even if Unofficial," Chicago Daily Law Bulletin, Aug. 17, 2001
"Myerscough Considering Run for Illinois Supreme Court," Copley News Service, June 11, 2001

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00835 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.758

"Steigmann Tilts for Seat on High Court," Chicago Daily Law Bulletin, May 29, 2001
"Challengers for Downstate Supreme Court Seat Lining Up," Chicago Daily Law Bulletin, Feb. 13, 2001
"Shadow of Scandal Hard for Ryan to Shake," Beacon News, Jan. 24, 2001
"Shadow of Scandal will be Hard for Gov. Ryan to Shake," Copley News Service, Jan. 21, 2001
"Dedicated to Saving Juveniles; County Board Displays Building, Honors Trio," The State Journal-Register, Oct. 27, 2000
"Two Big Issues in Race Between Rutherford, Graves," Copley News Service, Oct. 16, 2000
"He Saw the Law Early On, Got Hooked," Chicago Daily Law Bulletin, April 5, 2000
"New Appellate Court Judge Sworn in; Chief Judge of 7th Judicial Circuit Now Part of 4th District Appellate Court," Journal Star, Nov. 26, 1998
"Myerscough Sworn in as 4th District Appellate Court Judge," The State Journal-Register, Nov. 26, 1998
"Scott, Myerscough Prepare to Leave Old Posts; Judges Honored with Reception at County Complex," The State Journal-Register, Nov. 21, 1998
"Durbin Gets 'Break' in Election Results," Herald-News, Nov. 8, 1998
"D'Amato Loss Ends 'Discrimination' at Durbin's D.C. Digs," The State Journal-Register, Nov. 5, 1998
"Myerscough Bucks Trend, Takes 4th District Appellate Seat," Chicago Daily Law Bulletin, Nov. 4, 1998
"Myerscough Outlasts Appleton in 4th District Appellate Court," The State Journal-Register, Nov. 4, 1998
"Tighter Supervision of Sex Offenders Planned; Sangamon County Aims to Reduce Repetition of Crimes," The State Journal-Register, Oct. 31, 1998
"Judges Vie for Appeals Court Vacancy," The Pantagraph, Oct. 31, 1998
"4th Dist. Appellate Judge: Tom Appleton vs. Sue Myerscough," The State Journal-Register, Oct. 29, 1998
"Judges Asked to Delay Some Sentences until Jail Cells are Painted," The State Journal-Register, Oct. 21, 1998
"Outside Judge to Hear Trial of One Eyed Jack," The State Journal-Register, Sept. 24, 1998
"Appleton's Statistics Don't Add Up in Myerscough's View," The State Journal-Register, Sept. 13, 1998
"Local," The State Journal-Register, July 27, 1998
"Woodson: Hasara Should Focus on CWLP, not Oak Ridge," The State Journal-Register, July 19, 1998
"Jury Notices: Appearing Soon in a Mailbox Near You," The State Journal-Register, July 16, 1998
"School Violence Concerns Take Center Stage," The State Journal-Register, July 7, 1998

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00836 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.759

"Durbin Meets with School Officials to Tout Gun Proposal – Federal Law Would Require Trigger Locks, Secured Storage and Owner Responsibility," Herald & Review, July 7, 1998
"Raise for Public Defender Pay Postponed by County," The State Journal-Register, June 24, 1998
"Seminar Debunks Myths of Family Violence; 7th Circuit Works to Raise Awareness and Cooperation," The State Journal-Register, May 27, 1998
"Symposium will Focus on Family Violence; First Step in Setting Up Coordinating Council for Courts," The State Journal-Register, May 25, 1998
"New Work Crew Program Begins for Sangamon County Offenders to Work in Community," The State Journal-Register, April 7, 1998
"Bar Group Gives Thumbs-Up to 2 in Appeals Race," Chicago Daily Law Bulletin, March 13, 1998
"Ardor in the Court; Saturday Weddings have a Nice Ring to Them," The State Journal-Register, Feb. 15, 1998
"Census May Mean New Funds for Hall; Population Level Could Hike Fee Rates," The State Journal-Register, Jan. 26, 1998
"Sangamon, Champaign Counties to Split Juvenile Center Grant," The State Journal-Register, Dec. 11, 1997
"Sheriff: Don't Delay Sentences; But Seemingly Simple Solution Poses Problems," Dec. 9, 1997
"Some Escapees Unpunished; Sentencing Discrepancy Surprises Officials," The State Journal-Register, Dec. 8, 1997
"For Workers, Dec. 26 No Day in Court," The State Journal-Register, Dec. 6, 1997
"Three Judges Take Aim at Appellate Post; Justice Frederick Green is Vacating Fourth District Seat," The State Journal-Register, Nov. 25, 1997
"Springfield Judge Scott Considers Federal Appointment," Copley News Services, Oct. 23, 1997
"New County Probation Chief Getting Files, System in Order," The State Journal-Register, Sept. 15, 1997
"'Team Player' Daniels is Keeping Statewide Options Open," The State Journal-Register, Aug. 28, 1997
"Other Counties May Not Share Cost Juvenile Center Estimated Up to $6.4 Million," The State Journal-Register, Aug. 8, 1997
"Source of Heiple's Jury Duty 'Hardship' Hard to Figure," The State Journal-Register, March 5, 1997
"Children Given a Special Waiting Room in Courts Complex," The State Journal-Register, Oct. 5, 1996
"Mayor Rips Judge for Dismissing Cases; Many of the Tickets Were Issued During a Special Crackdown," The State Journal-Register, Aug. 9, 1996
"Noise Violation Cases Not Reason for Shuffle Presiding Judge Says," The State Journal-Register, Aug. 3, 1996
"Students Court History, See Jail Up Close," The State Journal-Register, March 17, 1996

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00837 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.760

"Night Courting; Sangamon County Tries to Improve Jury Duty Participation," The State Journal-Register, March 13, 1996
"Local," The State Journal-Register, Feb. 16, 1996
"Technology Trying to Serve Juries," The State Journal-Register, Dec. 25, 1995
"Legal Community Remembers Lee Humphrey Dodd," The State Journal-Register, Oct. 24, 1995
"Myerscough in Line for Federal Post; Clinton Backs Judge's Nomination," The State Journal-Register, Oct. 12, 1995
"County Will Hire Full-Time Defender; Ever Increasing Demand Brought Need for New Post," The State Journal-Register, Sept. 21, 1995
"Ambulance Response Criticized; Witnesses Say Paramedics Slow in Pool Mishap," The State Journal-Register, Sept. 2, 1995
"Sangamon County May Get Full-Time Public Defender," Chicago Daily Law Bulletin, Sept. 1, 1995
"Courting Romance; More and More Couples Let Judges do the Honors for Their Weddings," The State Journal-Register, Aug. 7, 1995
"Appellate Court Says Jurors Can Take Notes," The State Journal-Register, July 26, 1995
"Attorney General: County Should Name Chief Public Defender," The State Journal-Register, July 16, 1995
"Cadagin Retires; Judge to be Missed by the Court," The State Journal-Register, June 24, 1995
"Spring Cleaning in Springfield," Chicago Daily Law Bulletin, June 12, 1995.
"Senators Back Myerscough for Federal Judgeship," The State Journal-Register, Jan. 10, 1995
"GOP May Get Control of Springfield Election Commission," The State Journal-Register, Dec. 18, 1994
"New Judge Robert Hall Placing 'High Priority' on Domestic Violence," The State Journal-Register, July 24, 1994
"Myerscough Interested in Federal Judge Baker's Seat," The State Journal-Register, April 21, 1994
"She Chose the Law, But Remains a Teacher," Chicago Daily Law Bulletin, March 30, 1994
"On Stage with Abraham Lincoln; Local Lawyers to Re-Enact One of His Most Sensational Cases," The State Journal-Register, Oct. 12, 1993
"Women Judges Seek Increase in Numbers," Chicago Lawyer, April 1, 1991
"Myerscough Pledges There'll Be Justice for All," The State Journal-Register, Dec. 4, 1990
"Judicial Candidate Carmody a Courthouse Veteran," The State Journal-Register, July 20, 1990
"Myerscough Running for Circuit Judge Post," The State Journal-Register, April 21, 1990
"Myerscough Takes Office as New Judge," The State Journal-Register, July 21, 1987

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00838 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.761

On September 14, 1998, I interviewed with Sally Quinn, of the regional NPR affiliate station, during the campaign for my current Appellate Court position. The interview is available at http://will.illinois.edu/afternoonmagazine/interview/aftmag980914.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

From July 1987 to December 1990, I served as an Associate Judge on the Seventh Judicial Circuit of Illinois, appointed by the circuit judges of this trial court of general jurisdiction. By authorization of the Chief Judge of the court and as permitted by statute, Associate Judges in our court had the same jurisdiction as Circuit Judges, including over all felony cases.

From December 1990 to December 1998, I served as an elected Circuit Judge on the Seventh Judicial Circuit of Illinois. From December 1996 to November 1998, I served as Chief Judge of the Seventh Judicial Circuit of Illinois and from December 1994 to November 1998, I served as Presiding Judge of Sangamon County. From 1997 to 1998, I served as Circuit Judge of the Statewide Grand Jury appointed by the Chief Justice of the Illinois Supreme Court. From 1990 to 1998, I served serially as Chief in each division of our civil and criminal courts.

Since December 1998, I have served as Appellate Court Justice for the Fourth District Appellate Court, an elected position with appellate jurisdiction. Our court hears appeals of right from the circuit court and a number of state agencies, such as the Illinois Commerce Commission. From 2002 to 2003 and again since 2009, I have served as Presiding Justice of the Fourth District Appellate Court of Illinois.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As a trial judge, I presided over thousands of cases that have gone to verdict or judgment. These ranged in length and complexity from simple traffic cases to complex civil litigation and murder trials. In addition, I have authored approximately 1,280 decisions in the appellate court and been a panel member on 3,930 cases.

i. Of these, approximately what percent were:

jury trials:	20%
bench trials:	80%
civil proceedings:	50%
criminal proceedings:	50%

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00839 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.762

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Given the age of my trial court cases, the court files are no longer available. I have reconstructed information for my answers below based upon my best recollection and any appellate rulings (published or unpublished) that I was able to locate.

1. People v. Edgington, Circuit Court of Sangamon County, case No. 90CF328, aff'd in part, rev'd in part, No. 4-91-0897 (1992) (unpublished order supplied), appeal denied, 612 N.E.2d 518 (Ill. 1993). Defendant Edgington and four other men stalked a female college student, blocking her car on a back country road. Defendant pulled the victim from her car when she rolled down her window. She was abducted and found slain in a cornfield days later. In this death-eligible murder trial, the jury found defendant guilty of murder. As the jury began deliberation on the penalty phase, defendant sought to waive the jury. I denied the motion. The jurors found defendant eligible for the death penalty, but they did not impose it. I sentenced defendant to life in prison on the murder count. Following remand from the Appellate Court, I resentenced on a lesser charge that was to be served concurrently but that did not affect the total sentence.

The prosecutor was Don Cadagin, 3924 Stone Bridge Road, Springfield, IL 62711, (217) 787-6587. The defense attorney was Jon Noll, 802 S. Second Street, Springfield, IL 62704, (217) 544-8441.

2. People v. Asbestospray, Circuit Court of Sangamon County, case No. 90L407, rev'd and rem'd, 616 N.E.2d 652 (Ill. App. Ct. 1993). The State filed suit against two manufacturers of asbestos-containing products used in the construction of a public building. I dismissed the suit as untimely. The appellate court reversed, finding (1) the construction statute of repose did not bar the State's cause of action and (2) the State had benefit of a common law exemption from the statute of repose for product liability actions. The appellate court also held that the construction statute's protections could only be invoked by those manufacturers who had a role in the building construction that went beyond simply providing standard products and that defendants in this case were unable to claim such a role.

Attorneys for the State were Assistant Attorney General Marilyn Kueper, 500

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00840 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.763

South Second Street, Springfield IL (217) 525-1070. Defense attorneys were Howard Emmerman, 161 No. Clark Street, Suite 2600, Chicago IL 60601-3297, (312) 368-4031.

3. American Home v. Golomb, Circuit Court of Sangamon County, case No. 91CH104, aff'd, 239 Ill. App. 3d 37, 606 N.E.2d 793 (1992), appeal denied, 151 Ill. 2d 561, 616 N.E.2d 331. After the client discharged the attorney, the attorney sought to recover his attorney fees under a theory of quantum meruit. I dismissed the complaint because Illinois law prohibits an attorney from recovering fees under a theory of quantum meruit where the original contingent-fee agreement was an illegal contract and against public policy. The appellate court affirmed.

Principal attorneys were William McNutt, 3071 N. Water Street, Decatur IL 62526-2464, (217) 429-1600, and Dave Requa, who no longer practices law.

4. Morris v. City of Springfield, Circuit Court of Sangamon County, case No. 91MR228 (no appeal). This was an appeal from the Springfield City Council's denial of an election recount. The City argued the circuit court lacked jurisdiction to order a recount. I found jurisdiction and ordered an election recount. The candidate had won by one vote, and evidence was presented of questionable voting and registration practices of the election commission. My decision was not appealed.

Principal attorneys were Jim Morphew, 607 E. Adams, Suite 800, Springfield, IL 62701-1623, (217) 544-1144; T. McGarry (deceased); Neil Flynn, 1035 S. Second Street, Springfield IL, 62701, (217) 544-0261; Bob Hall, 200 S. Ninth Street, Springfield, IL 62701, (217) 753-6826; and Jim Zerkle, 500 W. Monroe, Springfield, IL 62704, (217) 528-5627.

5. Illinois Municipal League v. Seibert, Circuit Court of Sangamon County, case No. 90MR228, rev'd, 585 N.E.2d 1130 (Ill. App. Ct. 1992). This was a declaratory judgment suit filed by the municipal insurer against a police officer who had been sued, together with the City, for civil rights violation by a detainee. The insurer submitted that it was not obligated to turn over control of the defense to the defendant police officer. On cross-motions for summary judgment, I found no conflict of interest existed between the insurer defending both the City and the police officer. The appellate court reversed, finding (1) the officer's interests could be prejudiced if he was represented by counsel selected by the association and
(2) "a conflict between the parties' interests in the way the constitutional claim and the punitive damages claim might be defended."

Principal attorneys were Stan Morris, 3104 Kensington Drive, Springfield, IL 62702, (217) 793-3075 and Kent Heller, 1101 Broadway Avenue, Charleston, IL 61938-4122, (217) 255-2700.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00841 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.764

6. Airco Industrial Gas Division v. Illinois Department of Revenue, Circuit Court of Sangamon County, case No. 90MR177, aff'd, 585 N.E.2d 1017 (Ill. App. Ct. 1991). The Department of Revenue assessed a deficiency under the Retailers' Occupation Tax Act against Airco, which sells industrial gases, for facilities fees the company charged. I reversed the Department's decision. The appellate court affirmed, agreeing that the deficiency should not have been assessed because customers were not required to rent equipment from Airco but could instead purchase and use their own.

Principal attorneys were Pat Reilly, 607 E. Adams, Suite 800, Springfield, IL 62701-1623; Attorney General Roland Burris, (217) 782-1090; and H. Randolph Williams, (312) 861-8000.

7. Groves v. Department of Professional Regulation, Circuit Court of Sangamon County, case No. 90MR165 aff'd, 583 N.E.2d 93 (Ill. App. Ct. 1991). The Department of Professional Regulation denied an application for an Illinois engineering license made by an engineer who was already licensed in Texas. I held that the applicant met the requirements of the Professional Engineering Practice Act of 1989. The appellate court affirmed.

Principal attorneys were W. Trapp (deceased), (217) 544-8491 and Attorney General Roland Burris, (217) 782-1090. Jan Hughes, Assistant Attorney General, (312) 814-3000, 100 W. Randolph Street, Chicago, IL 60601.

8. AFSCME v. Netsch, Circuit Court of Sangamon County, case No. 91MR165 aff'd, 575 N.E.2d 945 (Ill. App. Ct. 1991). State workers brought a suit in mandamus looking to force the release of paychecks that were being held up as a result of the legislature's delay on an appropriations bill. I dismissed the suit against the comptroller on the basis that no authority for such order existed without an appropriation to pay the salaries of those State workers. The appellate court agreed.

Principal attorneys were Mike O'Hara, 407 E. Adams, Springfield, IL 62701, (217) 544-1771; and Attorney General Roland Burris, (217) 782-1090.

9. Sparks & Wiewel Construction Co. v. Martin, Circuit Court of Sangamon County, No. 91MR26, aff'd in part, rev'd in part, 620 N.E.2d 533 (Ill. App. Ct. 1993). A trucking company brought suit seeking declaratory and injunctive relief against the Department of Labor for its interpretation and enforcement of the Prevailing Wage Act. The Department had determined that certain employees of the company were entitled to prevailing wages. The Appellate Court affirmed my ruling that drivers employed to haul dirt to a highway construction site were exempt from the Prevailing Wage Act. However, it reversed my determination that the Department engaged in improper rulemaking, stating that the Department did not engage in rulemaking but instead just interpreted the statute. It also reversed my award of fees for the Department's improper rulemaking.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00842 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.765

Principal attorneys were Al Manson, 205 S. Fifth Street, Suite 700, Springfield, IL 62701, (217) 544-8491; Stan Niew, 600 Hunter Dr., Suite 310, Oakbrook, FL 60523, (630) 586-0110; Mike O'Hara, 407 E. Adams, Springfield, IL 62701, (217) 544-1771.

10. Brown v. WIPCO, Circuit Court of Sangamon County, case No. 89L384. Plaintiff received an electrical shock while unloading a dump truck at a power station. The electricity arced from a power line to the raised bed and through the truck to the plaintiff who was standing next to his truck. Plaintiff was severely and permanently injured by the volts. The three-week jury trial resulted in a verdict for plaintiff against several electric suppliers, a property owner, and a trucking business. The jury awarded $1.375 million in damages. The case was settled later for approximately $1 million.

Principal attorneys were Pat Reilly, 607 East Adams, Springfield, IL 62701, (217) 544-1144; Brad Blodgett, 400 S. Ninth Street, Springfield, IL 62701, (217) 528-7375; Rick Velde, 1 North Old State Capitol Plaza, Springfield, IL 62701, (217) 522-8822; and Greg Cerulo, 227 N.W. Jefferson Avenue, Peoria, IL 61602, (309) 674-1133.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Myers v. Heritage Enterprises, Incorporated, 820 N.E. 2d 604 (Ill. App. Ct. 2004), appeal denied. Appellant was represented by Karen Kendall, 124 S.W. Adams Street, Peoria, IL 61602, 309-676-0400. Appellee was represented by Bob Utter, 118 N. Capitol, Mt. Sterling, IL 62353, 217-773-3112.

2. In re Marriage of Ludwinski, 727 N.E.2d 419 (Ill. App. Ct. 2000), appeal denied. Appellant was represented by Sarah Tinney, 411 University, Champaign, IL 61824, 217-351-4040. Appellee was represented by Laurie Mikva, 302 N. 1st Street, Champaign, IL 61820.

3. People v. Cole, 874 N.E.2d 81 (Ill. App. Ct. 2007), appeal denied. Appellant was represented by Arden J. Lang, 400 W. Monroe, Springfield, IL 62704, 217-782-3654. Appellee was represented by Thomas R. Ewick, 1030 S. Durkin Drive, Springfield, IL 62704, 217-523-5900.

4. People v. Roberts, 872 N.E.2d 382 (Ill. App. Ct. 2007), appeal denied. Appellant was represented by Gary Peterson, 400 W. Monroe, Springfield, IL 62704, 217-782-3654. Appellee was represented by Charles Mansfield, Office of Appellate Prosecutor, 725 So. Second Street, Springfield, IL 62704, 217-782-8076.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00843 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.766

5. People v. O'Brien, 376 N.E.2d 639 (Ill. App. Ct. 2000) (dissenting), rev'd. 754 N.E.2d 327 (Ill. 2001) (adopting my dissent). Appellee was represented by James B. Kuehl, 301 W. Green Street, Urbana, IL 61801, 217-328-6000. Appellee was represented by David Hibben, 3100 N. Lake Shore Drive, Unit 308, Chicago, IL 60657, 217-782-8076.

6. Poindexter v. Department of Human Services, 869 N.E.2d 139 (Ill. App. Ct. 2006), aff'd. 890 N.E.2d 4 (Ill. 2008). Appellant was represented by Gary S. Feinerman, Sidley, One So. Dearborn Street, Chicago, IL 60603, 312-853-7000. Appellee was represented by Duane D. Young, 1300 So. Eighth Street, Springfield, IL 62703, 217-544-8500.

7. In Re Sophia G., 867 N.E.2d 1128 (Ill. App. Ct. 2007), aff'd, 2008 WL 2131578 (Ill. 2008) (adopting my dissent). Appellant was represented by Howard Feldman, 1307 So. 7th Street, Springfield, IL 62705, 217-544-3403. Appellee was represented by Norbert Goetten, 201 W. Pearl Street, Jerseyville, IL 62052, 618-498-5571.

8. Porter v. Decatur Memorial Hospital, 867, N.E.2d 1049 (Ill. App. Ct. 2008) (dissenting), rev'd, 882 N.E.2d 583 (Ill. 2008) (adopting my dissent). Appellant was represented by Ken Blan, 2730 So. MacArthur Blvd., Springfield, IL 62704, 217-523-2474. Appellee was represented by Jerald Jackson, 225 No. Water Street, Suite 301, Decatur, IL 62523-2328, 217-429-4325.

9. People v. Rollins, 892 N.E.2d 21 (Ill. App. Ct. 2008), appeal denied, 897 N.E. 2d 261 (Ill. 2008). Appellant was represented by Linda McLain, Office of Appellate Prosecutor, 712 So. 2nd Street, Springfield, IL 62704, 217-782-8076. Appellee was represented by Dan Kirwin, 117 No. 10th Street, Suite 300, Mt. Vernon, IL 62864, 618-244-3466.

10. People v. Hart, N.E.2d 964 (Ill. App. Ct. 2004), rev'd. 828 N.E.2d 260 (Ill. 2005). Appellant was represented by David Mannchen, 725 So. 2nd Street, Springfield, IL 62704, 217-782-8076. Appellee was represented by Dan Yuhas, 2521 Greenbriar Drive, Springfield, IL 62704, 217-787-7825.

Provide a list of all cases in which certiorari was requested or granted.

I am aware of only one of my cases from the trial court where certiorari was sought. Brown's Furniture v. Zehnder, 519 U.S. 866, 117 S. Ct. 175, (1996), cert. denied.

I am aware of only one appellate case where certiorari was granted. I was on the panel of the Appellate Court but not the author of that decision. Illinois v. Charles McArthur, 304 Ill. App. 3d 395, 713 N.E.2d 93 (1999), appeal denied, 185 Ill. 2d 651, 720 N.E.2d 1101 (1999), 531 U.S. 326 (2001).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00844 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.767

I have also identified the following appellate cases in which certiorari was requested from and denied by the Supreme Court of the United States, although there may be others I have been unable to identify:

1. People v. Perkins, No. 4-98-0208 (Ill. App. Ct., 4th Dist., filed Dec. 28, 1999), appeal denied, 531 U.S. 885 (2000), cert. denied, 531 U.S. 885.
2. People v McArthur, 304 Ill. App. 3d 395 (1999) (by Cook), appeal denied, 185 Ill. 2d 651, reversed and remanded, Illinois v. McArthur, 531 U.S. 326 (2001).
3. People v. Finley, 312 Ill. App. 892 (2000) (Myerscough, specially concurring), appeal denied, 189 Ill.2d 692 and 191 Ill.2d 592, cert. denied, 531 U.S. 1174 (2001).
4. People v. Willing, No. 4-98-0709 (Ill. App. Ct., 4th Dist., filed Sept. 15, 2000), appeal denied, 193 Ill. 2d 599 (2001), cert. denied, 532 U.S. 1013 (2001).
5. People v. Holmes, No. 4-98-0768 (Ill. App. Ct., 4th Dist., filed Apr. 28, 2000), appeal denied, 189 Ill. 2d 694 (2000), cert. denied, 531 U.S. 1040 (2000).
6. People v. Lofton, No. 4-98-0769 (Ill. App. Ct., 4th Dist., filed Apr. 28, 2000), appeal denied, 189 Ill.2d 695 (2000), cert. denied, 531 U.S. 1040.
7. People v. Alcazar, No. 4-98-0863 (Ill. App. Ct., 4th Dist., filed Apr. 13, 2000), appeal denied, 189 Ill. 2d 695 (2000), cert. denied, 531 U.S. 1167 (2001).
8. People v. Campbell, 332 Ill.App.3d 721 (by Cook), appeal denied, 202 Ill. 2d 622 (2002), cert. denied, 538 U.S. 1062 (2003), summary dismissal of post-conviction petition reversed and remanded on other grounds, 345 Ill. App. 3d 810 (2004) (Myerscough not on panel), subsequent appeal denied, 224 Ill. 2d 580 (2007).
9. In re: S.D. & M.D.; People v. Donley, No. 4-99-0109 (Ill. App. Ct., 4th Dist., filed June 30, 1999), appeal denied, 185 Ill. 2d 628, cert. denied, 528 U.S. 1193 (2000).
10. People v. Little, No. 4-99-0145 (Ill. App. Ct., 4th Dist., filed Mar. 31, 2000), appeal denied, 189 Ill. 2d 695 (2000), cert. denied, 531 U.S. 1038 (2000), post-conviction relief denied, 335 Ill. App. 3d 1046 (2003) (Myerscough not on panel).
11. People v. Coleman, No. 4-99-0220, (Ill. App. Ct., 4th Dist., filed Jan. 25, 1999), appeal denied, 189 Ill. 2d 664; cert. denied, 531 U.S. 1084 (2001).
12. People v. Eveans, No. 4-99-0453, (Ill. App. Ct., 4th Dist., filed Mar. 12, 2001,) appeal denied, 195 Ill. 2d 584, cert. denied, 534 U.S. 1058.
13. People v. Childs, No. 4-99-0496), (Ill. App. Ct., 4th Dist., filed June 22, 2001), appeal denied, 196 Ill. 2d 550 (2001), cert. denied, 535 U.S. 906.
14. People v. Staples, No. 4-99-0538 (Ill. App. Ct., 4th Dist., filed Aug. 24, 2001), appeal denied, 197 Ill. 2d 580), cert. denied, 535 U.S. 1061 (2002).
15. People v. Williamson, 319 Ill. App. 3d 891 (2001) (by Myerscough), appeal denied, 195 Ill. 2d 597, cert. denied, 534 U.S. 1028.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00845 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.768

16. People v. Johnson, No. 4-99-0667 (Ill. App. Ct., 4th Dist., filed Oct. 16, 2000), appeal denied, 193 Ill. 2d 593 (2001), cert. denied, 534 U.S. 839.
17. People v. Commodore, No. 4-99-0768 (Ill. App. Ct., 4th Dist., filed June 4, 2002), appeal denied, 201 Ill. 2d 582, cert. denied, 537 U.S. 1237 (2003).
18. People v. Dillard, 319 Ill. App. 3d 102 (2001) (by Steigmann), appeal denied, 195 Ill. 2d 559, cert. denied, 534 U.S. 978.
19. In the Matter of J.D.; Jane Doe v. John Noe, et al., 317 Ill. App. 3d 419 (2000) (by Steigmann), appeal denied, 194 Ill. 2d 568 (2001), cert. denied, Doe v. Noe, 535 U.S. 932 (2002).
20. In the Matter of J.D.; Jane Doe, v. John Noe, et al., 317 Ill. App. 3d 445 (2000) (by Myerscough), appeal denied, 194 Ill. 2d 568 (2001), cert. denied, Doe v. Noe, 535 U.S. 932 (2002).
21. People v. Holmes, No. 4-00-0962 (Ill. App. Ct., 4th Dist., filed Apr. 19, 2004), appeal denied, 211 Ill.2d 596 (2004), cert. denied, 541 U.S. 1076 (2004) and 544 U.S. 985 (2005).
22. People v. Lofton, No. 4-00-0963 (App.Ct.Ill. filed Apr. 19, 2004), appeal denied, 211 Ill. 2d 599, cert. denied, 546 U.S. 893 (2005).
23. People v. Harris, No. 4-00-0986 (App.Ct.Ill. filed Jan. 10, 2002), appeal denied, 198 Ill.2d 623 (2002), cert. denied, 537 U.S. 845.
24. People v. Walker, No. 4-01-0141 (Ill. App. Ct., 4th Dist., filed June 5, 2002), 329 Ill.App.3d 1252 (2002), appeal denied, 205 Ill.2d 638 (2003), cert. denied, 541 U.S. 1016 (2004).
25. Luker v. Roderick, No. 4-01-0329 (Ill. App. 4th, filed Jan. 15, 2002), appeal denied, 199 Ill.2d 557, cert. denied, 537 U.S. 1215 (2003).
26. People v. Johnson, No. 4-02-0467 (Ill. App. Ct., 4th Dist., filed Mar. 29, 2004), appeal denied, 211 Ill.2d 597, cert. denied, 543 U.S. 1162 (2005).
27. City of Champaign, Illinois v. Sides, 349 Ill. App. 3d 293 (2004) (by Myerscough), appeal denied, 211 Ill. 2d 572, cert. denied, 544 U.S. 924 (2005).
28. People v. Slover, No. 4-02-0587, cert. denied, 547 U.S. 1212 (2006).
29. People v. Lofton, No. 4-02-0810 (Ill. App. Ct., 4th Dist., filed Aug. 10, 2004), appeal denied, 212 Ill.2d 545, cert. denied, 544 U.S. 1003 (2005).
30. People v. Bailey, 364 Ill.App.3d 404 (2006) (by Myerscough), appeal denied, 221 Ill. 2d 645, cert. denied, 549 U.S. 1345 (2007).
31. People v. Johnson, No. 4-03-0190 (Ill. App. Ct. 4th Dist., filed Mar. 29, 2004), appeal denied, 211 Ill. 2d 597 (2004), cert. denied, 543 U.S. 1162 (2005).
32. People v. Lash, No. 4-03-0339 (Ill. App. Ct., 4th Dist., filed May 16, 2005), appeal denied, 217 Ill. 2d 581 (2005), cert. denied, 547 U.S. 1116 (2006).
33. People v. Davis, 356 Ill. App. 3d 940 (2005) (by Cook), appeal denied, 216 Ill. 2d 702, cert. denied, 547 U.S. 1131 (2006).
34. People v. Griffin, No. 4-03-1068 (Ill. App. Ct., 4th Dist., filed Mar. 28, 2005), appeal denied, 216 Ill. 2d 707 (2005), cert. denied, 549 U.S. 835 (2006).
35. People v. Marcrum, No. 4-04-0017 (Ill. App. Ct., 4th Dist., filed May 24, 2005), appeal denied, 216 Ill. 2d 714 (2005), cert. denied, 547 U.S. 1023 (2006).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00846 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.789

36. People v. White, No. 4-04-0079 (Ill. App. Ct., 4th Dist., filed Jan. 27, 2006), appeal denied, 219 Ill.2d 594, cert. denied, 549 U.S. 978 (2006).
37. People v. Owens, No. 4-04-0087 (Ill. App. Ct., 4th Dist.), appeal denied, 225 Ill. 2d 663 (2007), cert. denied, 552 U.S. 1186 (2008).
38. People v. Walker, No. 4-04-0337 (Ill. App. Ct., 4th Dist., filed May 11, 2006), appeal denied, 221 Ill.2d 670 (2006), cert. denied, 549 U.S. 1256 (2007).
39. Shields v. Walker, No. 4-04-0591 (Ill. App. Ct., 4th Dist., filed May 11, 2005), appeal denied, 216 Ill.2d 734 (2005), cert. denied, 546 U.S. 1100 (2006).
40. People v. Revell, 372 Ill. App. 3d 981 (2007) (by Myerscough), appeal denied, 225 Ill. 2d 665 (2007), cert. denied, 552 U.S. 1211 (2008).
41. Hughes v. Department of Corrections, No. 4-04-0978 (Ill. App. Ct., 4th Dist., filed June 23, 2005), appeal denied, 217 Ill.2d 562 (2005), cert. denied, 547 U.S. 1137 (2006).
42. People v. Henry, No. 4-05-0941 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 680 (2008), cert. denied, 129 S. Ct. 2843 (2009).
43. People v. Hollinshead, No. 4-06-0061 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill.2d 641 (2008), cert. denied, 129 S. Ct. 1353 (2009).
44. People v. Jackson, No. 4-06-0108 (Ill. App. Ct., 4th Dist), appeal denied, 226 Ill. 2d 624 (2008), cert. denied, 128 S. Ct. 2893 (2008).
45. Powell v. Pierce, No. 4-06-0166 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 658 (2008), cert. denied, 129 S. Ct. 1634 (2008).
46. People v. Howard, No. 4-06-0498 (Ill. App. Ct., 4th Dist), appeal denied, 228 Ill. 2d 542 (2008), cert. denied, 129 S. Ct. 1342 (2009).
47. People v. Mosley, No. 4-06-0516 (Ill. App. Ct., 4th Dist), appeal denied, 228 Ill. 2d 546 (2008), cert. denied, 129 S. Ct. 912 (2009).
48. People v. Williams, No. 4-06-0584 (Ill. App. Ct., 4th Dist), appeal denied, 228 Ill. 2d 551 (2008), cert. denied, 129 S. Ct. 643 (2008).
49. Imler v. Central Mutual Ins. Co., No. 4-06-0720 (Ill. App. Ct., 4th Dist), appeal denied, 226 Ill. 2d 584 (2007), cert. denied, 128 S. Ct. 2509 (2008).
50. People v. Akers, No. 4-06-0926 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 629 (2008), cert. denied, 129 S. Ct. 1591 (2009).
51. People v. Wooten, No. 4-07-0053 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 656 (2008), cert. denied, 129 S. Ct. 1583 (2009).
52. Delaney v. Jett, No. 4-07-0211 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 619 (2008), cert. denied, 129 S. Ct. 1676 (2009).
53. People v. Gray, No. 4-07-0233 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 656 (2009), cert. denied, 129 S. Ct. 1583.
54. People v. Bradley, No. 4-07-0631 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 673 (2008), cert. denied, 129 S. Ct. 2385 (2009).
55. People v. Hunt, No. 4-07-0795 (Ill. App. Ct., 4th Dist), appeal denied, 231 Ill. 2d 643 (2009), cert. denied, 129 S. Ct. 2015.
56. People v. Doak, No. 4-07-0842 (Ill. App. Ct., 4th Dist), appeal denied, 232 Ill. 2d 585 (2009), cert. denied, 130 S. Ct. 322.
57. Citibank South Dakota, N.A. v. Mayo, No. 4-07-0932 (Ill. App. Ct., 4th Dist), appeal denied, 231 Ill. 2d 630 (2009), cert. denied, 129 S. Ct. 2867.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00847 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.770

58. In re: Ulrich, No. 4-08-0059 (Ill. App. Ct., 4th Dist), appeal denied, 229 Ill. 2d 661 (2009), cert. denied, 129 S. Ct. 1526.
59. People v. Witherspoon, 379 Ill. App. 3d 298 (2008) (by Myerscough), appeal denied, 228 Ill. 2d 552, cert. denied, 129 S. Ct. 1590 (2009).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

During my service as a trial judge from 1987 to 1998, I handled thousands of cases. Although my decisions were reversed on some occasions, I did not maintain any record of reversals and I cannot recall specific cases. Many of these rulings were unpublished and not maintained in an electronic database. The list below contains all reversals I have identified, though there may be others that I have been unable to find.

Reported Opinions

1. McMath v. Katholi. Deceased patient's spouse sued cardiologist for medical malpractice. Following a jury trial, judgment was entered for the cardiologist. The Appellate Court reversed, finding I abused my discretion by allowing the cardiologist to testify to cause of death applying S.Ct. Rule 220 as urged by both trial counsel, rather than new S.Ct. Rule 213. 711 N.E.2d 1135 (Ill. App. Ct. 1999). The Illinois Supreme Court affirmed my ruling that plaintiff had forfeited the issue. 730 N.E.2d 1 (Ill. 2000).

2. Bank One, Springfield v. Roscetti. The Appellate Court reversed my findings that guaranties are not credit agreements under the Credit Agreements Act and that Bank One breached its duty of good faith and fair dealing. 723 N.E.2d 755 (Ill. App. Ct. 1999).

3. R. L Polk and Company v. George H. Ryan. The Appellate Court dismissed the appeal of a preliminary injunction as moot because a permanent injunction had been entered and reversed the issuance of the injunction, finding the Secretary of State had authority to adopt a rule barring the sale of driver's license, vehicle, and title lists even though not all steps for notification of a new regulation were taken, but those steps taken were found sufficient. 694 N.E.2d 1027 (Ill. App. Ct. 1998).

4. Brown Furniture Inc. v. Wagner. The Illinois Supreme Court reversed my finding that an out of state furniture company who only delivered in Illinois lacked minimal contacts and collection of the use tax was therefore a violation of the Commerce Clause. 665 N.E.2d 795 (Ill. App. Ct. 1996).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00848 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.771

5. Walker v. Rogers. The Appellate Court reversed my judicial order approving assignment of a portion of lottery winnings to buy a house even though the statute in question stated, "any person pursuant to an appropriate judicial order may be paid the prize to which a winner is entitled." 650 N.E.2d 272 (Ill. App. Ct. 1995).

6. Craftmasters, Inc. v. Department of Revenue. The Appellate Court reversed my ruling awarding retailer's occupation tax exemption on sales of building materials incorporated into real estate within an enterprise zone where the materials were purchased outside the jurisdiction which created the enterprise zone. 647 N.E.2d 607 (Ill. App. Ct. 1995).

7. Mitchell v. Fiat-Allis, Inc. The Supreme Court reversed the Appellate Court, which had affirmed my ruling granting a section 2-1401 motion to set aside my judgment order, which the circuit clerk had failed to send to the parties within the 30 days time to appeal. 632 N.E.2d 1010 (Ill. App. Ct. 1994).

8. Medcat Leasing Co. v. Whitley. The Appellate Court reversed my award of summary judgment. I had held that the computed tomography scanner at issue was not subject to the state use tax and that the Department of Revenue's regulation regarding the use tax was invalid. However, the Appellate Court found the statute term governing the dispute—"medical equipment"—ambiguous and that the Department's interpretation of that term and subsequent regulation was reasonable. 652 N.E.2d. 424 (Ill. App. Ct. 1993).

9. Sparks & Weiwel Co. v. Martin. The Appellate Court affirmed my ruling that drivers employed to haul dirt to a highway construction site were exempt from the Prevailing Wage Act but reversed my award of fees for the Department's improper rule making. 620 N.E.2d 533 (Ill. App. Ct. 1993).

10. People v. Asbestospray. I dismissed the State's suit against two manufacturers of asbestos-containing products as untimely. The appellate court reversed, finding (1) common law exempted the State from the operation of the statute of repose for product liability actions; and (2) the construction statute of repose did not bar the State's cause of action because (a) the relevant section expressly included the State and waived its common-law exemption and (b) defendants could not claim the statute's protections because they had no role in the construction of the building. 616 N.E.2d 652 (Ill. App. Ct. 1993).

11. People v. Gibson. Following affirmance of convictions for home invasion, rape, deviate sexual assault, burglary, and felony theft, 117 Ill. App. 3d 270, 452 N.E.2d 1368, defendant petitioned for postconviction relief. I denied the petition. On appeal, the appellate court held that: (1) defendant could not challenge introduction of hypnotically enhanced testimony on grounds of res judicata, and (2) defendant was entitled to evidentiary hearing on his allegation of ineffectiveness of counsel who failed to subpoena an alibi witness. 612 N.E.2d 1372 (Ill. App. Ct. 1993).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00849 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.772

12. Collins v. Reynard. The Appellate Court reversed my refusal to dismiss a legal malpractice action for faulty contract for sale of business because the plaintiff's complaint for lawyer malpractice is cognizable in contract but not in tort. 553 N.E.2d 69 (Ill. App. Ct. 1990). The Supreme Court affirmed. On plaintiff's petition for rehearing, however, the Supreme Court held that a complaint against a lawyer for professional malpractice could be couched in either contract or tort, and recovery could be sought in the alternative. 607 N.E.2d 1185 (Ill. 1992).

13. Running v. State Banking Bd. of Illinois. The Appellate Court reversed my decision, holding that evidence concerning the bank president's authorization of loans to a horse breeding venture in which he held an interest was sufficient to support the determination that the president entered into "unsafe or unsound practice" in conducting the business of the ban, warranting his removal. 603 N.E.2d 1323 (Ill. App. Ct. 1992).

14. Cooper v. Department of Children and Family Services. Following a public hearing, defendant Illinois Department of Children & Family Services concluded the license of plaintiffs Shirley and William Cooper to operate a day-care center should be revoked because they "constantly, steadily, repeatedly, and continually violated the Department's licensing standards." The Coopers appealed that conclusion and the Appellate Court reversed my findings (1) DCFS lost jurisdiction over the Coopers' hearing regarding the revocation of their center's license because it failed to set the hearing within the statutorily prescribed time; (2) DCFS failed to follow its own regulations, thereby denying the Coopers due process; and (3) DCFS's final administrative decision was against the manifest weight of the evidence. The Appellate Court held that: (1) failure to hold a timely revocation hearing was not a jurisdictional defect; (2) licensees were not denied due process; and (3) the evidence supported revocation of the license. 599 N.E.2d 537 (Ill. App. Ct. 1992).

15. States Land Imp. Corp. v. E.P.A. The Appellate Court reversed my grant of the Illinois Environmental Protection Agency's motion to dismiss. The Appellate Court held that: (1) a common-law writ of certiorari to challenge the placement of a closed landfill on a State Remedial Action Priorities List (SRAPL) was the appropriate remedy, and (2) IEPA does not have the implied power to enact regulations creating the SRAPL without giving the site owner an opportunity to be heard as to when the site must be removed from the SRAPL. 596 N.E.2d 1164 (Ill. App. Ct. 1992).

16. Stewart v. Ryan. The Appellate Court reversed my order that affirmed the Secretary's denial of reinstatement of full driving privileges but reversed the Secretary's denial of the issuance of an RDP, holding that evidence concerning the motorist's driving record was sufficient to support the Secretary of State's denial of the motorist's request for a restricted driving permit. 595 N.E.2d 234 (Ill. App. Ct. 1992).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00850 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.773

17. Gallagher Drilling, Inc. v. Department of Revenue. The Appellate Court reversed my order refunding use tax because the amendment to the Retailers' Occupation Act was found to be retroactive. 592 N.E.2d 590 (Ill. App. Ct. 1992).

18. Rousey v. Industrial Comm'n. The Appellate Court reversed my award of cost of services to spouse of a permanently and totally disabled man with major brain injury because supervisory duties are not medical care. 587 N.E.2d 26 (Ill. App. Ct. 1992).

19. Illinois Municipal League Risk Management Association v. Siebert. The Appellate Court reversed my ruling the association was not required to pay for outside counsel for police officer because the request for punitive damages which were not covered by the association created a conflict of interest. 585 N.E.2d 1130 (Ill. App. Ct. 1992).

20. In re Marriage of Riech. The Appellate Court reversed my award of possession of the handicapped-accessible marital home to husband who cared for adult disabled son even though parties conceded the need to care for son. 566 N.E.2d 826 (Ill. App. Ct. 1991).

21. People vs. Buerkett. The Appellate Court reversed my grant of a petition to rescind a summary driver's license suspension, finding defendant's refusal based on his erroneous belief he had right to counsel was forfeited. 559 N.E.2d 271 (Ill. App. Ct. 1990).

Court of Appeals Fourth District of Illinois

I have written thousands of opinions and unpublished Rule 23 orders in my 12 years on the appellate bench. The unpublished opinions do not appear in an electronic database and so it is difficult to research subsequent history. I have identified the following reversals, although there may be others I have been unable to remember or identify.

1. Fisher v. Waldrop, 823 N.E.2d 657 (Ill. App. Ct. 2005). The custodial parent removed a child from the State without leave of court under the Parentage Act. The Supreme Court found "[t]he appellate court was correct to reverse the circuit court's judgment granting [the custodial mother] leave to remove [the minor] from Illinois, and was also correct that the Parentage Act requires the custodial parent to seek leave of court for removal and to prove that removal would be in the child's best interest." The Supreme Court also found that the circuit court's denial of the injunction was against the manifest weight of the evidence, as held by the appellate court. However, even if the denial were against the manifest weight of the evidence, the appellate court erred in ordering the circuit court to issue a permanent injunction on remand. The case was remanded for the circuit court to rule on the motion for injunction in accordance with the guidelines set forth by the Supreme Court. 849 N.E.2d 334 (Ill. 2006).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00851 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.774

2. In re Steven P., 797 N.E.2d 1071 (Ill. App. Ct. 2003). The Supreme Court in a supervisory order directed the appellate court to vacate its judgment in Steven P. and "enter a judgment reversing and vacating the Champaign County Circuit Court order granting the People's petition for authorization of electroconvulsive therapy and involuntary administration of medication, and remanding for compliance with the statutory requirements of 405 ILCS 5/2-102 (a-5)." 801 N.E.2d 947 (Ill. 2004).

3. People v. Bracey, 800 N.E.2d 1248 (Ill. App. Ct. 2003). The Supreme Court reversed, finding defendant's "right to a jury trial was violated when the circuit court, relying on a jury waiver executed by defendant in conjunction with his first trial, retried defendant on a charge of aggravated battery without first ascertaining whether, for his new trial, defendant knowingly and voluntarily waived his right to a jury trial." The appellate court had found the waiver was made with defendant's knowledge and consent because he did not seek to withdraw his earlier written waiver and he "silently acquiesced in the court's and counsel's statements regarding the earlier jury waiver made in his presence on the day of trial." The Supreme Court held the admonishments that defendant received in conjunction with his first trial were no longer effective. Moreover, defendant's silent acquiescence to a second bench trial was insufficient to support a finding that he knowingly and voluntarily relinquished his right to a jury trial. 821 N.E.2d 253 (Ill. 2004).

4. People v. Roberts, 813 N.E.2d 748 (Ill. App. Ct. 2004). The Supreme Court in a supervisory order directed the appellate court to reconsider its judgment in light of Illinois v. Caballes, 125 S.Ct. 834 (2005) and People v. Caballes, 851 N.E.2d 26 (Ill. 2006). The U.S. Supreme Court reversed the Illinois Supreme Court, holding a canine sniff during a routine traffic stop does not implicate the Fourth Amendment. The Illinois Supreme Court utilized the limited lock-step doctrine and determined the search also did not violate the state constitution. 853 N.E.2d 1230 (Ill. 2006).

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Until 2007, our court was limited to 150 published cases so nearly all cases were decided by Rule 23 orders. My publication rate has gone from 6 to 28 opinions per year in the last two years, or from four percent to 16 percent. I anticipate the rate will be significantly higher this year. The Rule 23 orders are maintained by the appellate clerk at our courthouse.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. People v. Morgan, 901 N.E.2d 1049 (Ill. App. Ct. 2009)

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00852 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.775

2. People v. Cole, 874 N.E.2d 81 (Ill. App. Ct. 2007)
3. Poindexter v. State ex rel. Department of Human Services, 869 N.E.2d 139 (Ill. App. Ct. 2007)
4. Russell v. Blagojevich, 853 N.E.2d 920 (Ill. App. Ct. 2006)
5. People v. Savage, 838 N.E.2d 247 (Ill. App. Ct. 2005)
6. People v. Hunter, 831 N.E.2d 1192 (Ill. App. Ct. 2005)
7. Mefford v. White, 770 N.E.2d 1251 (Ill. App. Ct. 2002)
8. People v. Roberts, 872 N.E.2d 382 (Ill. App. Ct. 2007)
9. Fisher v. Waldrop, 823 N.E.2d 657 (Ill. App. Ct. 2005), aff'd in part, rev'd in part, 849 N.E.2d 334 (Ill. 2006)
10. A.B.A.T.E. v. Giannoulias, No. 4-09-0069 (May 3, 2010) (Ill.App.Ct. 4th), available at 2010 Ill. App. LEXIS 498

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system). Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The circuit clerk and I have no record or recollection of any cases from my trial court years where a substitution motion was made. Most recusals would have been automatic motions that I did not see. I adhered to all ethical and legal requirements on recusals.

Our appellate court employs an automatic recusal system. My automatic recusal list, which I have provided to our clerk, includes my husband's law firm, my clerk's husband's law firm, and my brother-in-law's law firm. In our court, recusal decisions are

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00853 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.776

confidential to the court. Although there is no Illinois rule or statute governing appellate recusals, we strictly adhere to S.Ct. Rule 63 C, in essence recusing for conflicts such as friendship, relatives, monetary interest, material witness and bias.

The Illinois Code of Judicial Conduct, Rule 63, Canon 3C, governs when a judge must disqualify himself or herself in a proceeding. Although not an exclusive list, the Rule enumerates instances where a judge's impartiality might be questioned including proceedings where the judge has personal interest, bias or knowledge. The Rule also lists instances where members of the judge's family might have personal or economic interest in the proceedings. Section 5/114-5 of the Illinois Code of Criminal Procedure and section 5/2-1001 of the Illinois Code of Civil Procedure direct when parties may request a substitution of a circuit judge.

I have recused myself on the Appellate Court where I knew the individuals involved or my husband's firm or one of my clerks' husbands' firms were involved. Where any question of my impartiality could arise, I disclose and recuse if requested.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office.

I was nominated to be United States District Judge for the Central District of Illinois on October 11, 1995, and my nomination was returned by the Senate on October 4, 1996. I have had no other unsuccessful nominations for appointed office.

I was unsuccessfully a candidate for the Supreme Court of Illinois in 2002. I have had no other unsuccessful candidacies for elective office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

1990 Sue Myerscough Circuit Judge Campaign
1998 Sue Myerscough Appellate Court Justice Campaign
2002 Sue Myerscough Unsuccessful campaign for Supreme Court

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00854 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.777

I recall, although I cannot be certain, that I joined a Lawyer's Committee or otherwise participated in one or more of Sen. Richard Durbin's early campaigns for Congress, and in particular his 1986 campaign. I have never held a position or role in any other political campaigns.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1980 to 1981, I served as a law clerk to the Honorable Harold A. Baker, United States District Court for the Central District of Illinois.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1981 to 1985
Giffin, Winning, Lindner, Newkirk, Cohen & Bodewes P.C.
One West Old State Capitol Plaza
Springfield, Illinois 62701
Associate Attorney

1985 to 1987
Hinshaw, Culbertson, Moelmann, Hoban & Fuller
400 South Ninth Street, Suite 200
Springfield, Illinois 62701
Associate Attorney

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

As Chief and Presiding Judge of the Circuit Court, I made myself available for settlement conferences on a regular basis in many cases. I do not have records from those cases. On several occasions during the 1980s, I served as an insurance arbitrator in personal injury cases, but I do not recall the details.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00855 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.778

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

The majority of my practice consisted of insurance defense of doctors, police officers, lawyers, manufacturers, schools, and corporations. I had several plaintiff civil rights actions assigned to me by my firms, as well as pro bono prisoner cases assigned by U.S. District Judge James Ackerman (now deceased).

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The majority of my cases were medical malpractice defense, legal malpractice defense, products liability defense, and police officer defenses. Most of my clients were insurance companies and their insureds.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice was in litigation with frequent state and federal court appearances.

i. Indicate the percentage of your practice in:
   1. federal courts: 18%
   2. state courts of record: 80%
   3. other courts:
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99%
   2. criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I worked on thousands of cases. I tried approximately 50 cases (as sole counsel except for two as associate counsel).

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00856 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.779

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Frank v. Friedman, No. 82-3131. From approximately 1982 to 1985, I defended an attorney and his law firm who were sued by a doctor and his pension fund for malpractice and ERISA violations. Ultimately, a life insurance company, an insurance salesman, and an accountant were also added as defendants. The matter was settled after I became a judge. Judge Ackerman of the United States District Court for the Southern District of Illinois presided over the case. Opposing counsel was Steve Kauffman, 400 S. 9th Street, Suite 100, Springfield, IL 62701. 217-528-3674.

2. Duckworth v. Franzen, 780 F. 2d 645 (7th Cir. 1985). I was assigned by my firm to represent plaintiff Woodward in a three-week products liability, negligence, and civil rights jury trial against the State of Illinois. My representation lasted from approximately 1980 to 1985. My client was one of 21 prisoners who were chained together and to the seats in a transport bus that had the escape routes bolted for safety. The bus caught fire, and the guard abandoned the bus, closing the door, and leaving the prisoners in the fire. A substantial verdict was awarded. My former firm handled the case on appeal. The appellate court reversed establishing a new standard for civil rights violations. Fourteen years later, the matter was ultimately decided in favor of defendant by the Court of Claims. Judge Beatty of the United States District Court for the Southern District of Illinois presided over the case. Co-counsel were Rex Reu, 111 W. Front Street, Bloomington, IL 61701, 309-829-2150 and Loren Thomson, 105 N. Center Street, Bloomington, IL 61702, 309-829-7069. Opposing counsel was the Illinois Attorney General, by Jeff Finke, 217-782-1090.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00857 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.780

3. Davis v. Johnson, 745 F. 2d 1066 (7th Cir. 1984). I successfully defended a Decatur police officer in a civil rights action. The deceased's estate sued after Davis escaped from a nursing home, was arrested, and placed in a cell with an accused murderer who then murdered Davis. My client, Dauer, arrested Davis and placed him in the jail cell, as instructed, by the desk clerk who was found liable. My representation lasted from approximately 1981 to 1984. Co-counsel was Paul Bown, 205 S. 5th Street, Suite 700, Springfield, IL 62701, 217-544-8491. Judge Ackerman of the United States District Court for the Southern District of Illinois presided over the case. Opposing counsel was Richard Doyle, 1022 N. Vermilion, Danville, IL 61832, 217-446-3844.

4. Armstrong v. Mudd, No. 86-3277. In approximately 1986, I defended the City of Springfield and its police department. Summary judgment was awarded the City and was affirmed on appeal. In that case, the plaintiff was killed by a fleeing felon. The police had abandoned the chase at the time of the accident. The Court found that, but for the actions of the felon, the accident would not have happened. Judge Mills of the United States District Court for the Southern District of Illinois presided over the case. Opposing counsel was Tom Londrigan, 1227 S. 7th Street, Springfield, IL 62703, 217-544-9823. Co-counsel was Pat Londrigan, 200 So. 9th Street, Springfield, IL 62701, 217-753-6365.

5. Picou v. Hartigan, No. 86-3156. In approximately 1986, I represented the plaintiff on his equal protection and wrongful discharge claim against the Attorney General's office. Summary judgment was awarded to the defendant on the basis that, at the time of plaintiff's discharge, the defendant could not have known that discharging the plaintiff for his political affiliation was a violation of his rights. Judge Mills of the United States District Court for the Southern District of Illinois presided over the case. Opposing counsel was the Attorney General 217-782-1090.

6. Knox v. Edgar, No. 83-3375. In approximately 1983, I represented the plaintiff in this civil rights action. My client had been discharged for political reasons as head of a driver's license facility and had been reinstated by order, then transferred, demoted, and harassed at work. After years of discovery, the matter was settled out of court. Judge Ackerman of the United States District Court for the Southern District of Illinois presided over the case. Opposing counsel was the Attorney General 217-782-1090.

7. Wernsing v. Housel (clerk is unable to retrieve file number). In this one-week jury trial in Sangamon County Circuit Court, I represented the defendant driver who drove a vehicle and hit a pedestrian at a night-time party on a curve in the road. The videotape of the curve was one of the first successful uses of videotape in Sangamon County. My defendant was found responsible for payment of medical bills only, approximately $75,000. My representation lasted from approximately 1983 to 1984. Judge Cadagin presided over the case. Opposing counsel was Charles Gramlich, 2142 Huntleigh, Springfield, IL 62704, 217-670-1641.

8. In Yarger v. Board of Regents, 456 N.E. 2d 39 (Ill. 1983). After extensive research of the legislative history and the legislative archives, I obtained dismissal of the cause of action because the statute regulating sales in university book stores was unconstitutional

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00858 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.781

because the enrolled bills failed to include amendments enacted by the General Assembly. The Supreme Court affirmed. I wrote and argued the briefs at trial and in the Supreme Court. My representation lasted from approximately 1981 to 1983. Judge Friedman of the Circuit Court of Sangamon County presided over the case. Opposing counsel was Fred Moore, 108 W. Monroe Street, Bloomington, IL 61701, 309-827-8551.

9. Rock v. Thompson, 426 N.E. 2d 891 (Ill. 1981). I wrote the Supreme Court briefs which resulted in the Supreme Court issuing a mandamus against Thompson requiring a new vote on the election of Senate President because the vote had been taken without a quorum. Co-counsel was John Keith, 217 E. Monroe, Suite 100, Springfield, IL 62701, 217-528-4240. Opposing counsel was the Attorney General, 217-782-1090. 1981

10. Ballweg v. City of Springfield, 499 N.E. 2d 1373 (Ill.1986); Ogg v. City of Springfield, 458 N.E. 2d 1331 (Ill. 1984) and Ogg v. Coast Catamaran, 490 N.E. 2d 111 (Ill. 1986). In three separate several week jury trials, I did discovery, briefing, and trial preparation for defendant Coast Catamaran. A sailboat on Lake Springfield came into contact with power lines causing two deaths and other injuries. The Supreme Court found that evidence that the defendant's notice of other similar accidents was inadmissible, yet harmless error, that punitive damages are not recoverable under the Survival Act, that there is a presumption of loss of society of an adult child, and that when a lawsuit includes claims of comparative negligence and contribution, the jury must be instructed separately and return separate verdicts on the claims. My representation of the defendant lasted from approximately 1981 to 1984. Judge Cadagin presided over the case. Co-counsel was Grady Holley, 440 So. Grand Avenue West, Springfield, IL 62704, 217-544-3368. Opposing counsel was Tom Londrigan, 1227 S. 7th Street, Springfield, IL 62703, 217-544-9823.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege).

During my tenure as Chief Judge, the Seventh Judicial Circuit piloted use of a Family Violence Prevention Coordinating Council. As the council chair, I brought together educators, law enforcement, social service agencies, health care professionals, clergy, judges, and the legal community to work together to address and develop a coordinated community response to family violence. In addition to personally managing the juvenile court during my term as chief, I worked with Illinois elected leadership to secure funds for a feasibility study and ultimately a $1.74 million grant to support construction of a new Juvenile Detention Center. I helped to design the center and fought for and secured the inclusion of a staff-secure component for the new center. I also worked closely with the Juvenile Probation and Court Services department to secure a grant to implement Law Related Education (LRE) programs for the department. Juvenile offenders went through

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00859 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.782

a twelve week curriculum that allowed them to earn a graduation diploma. The Seventh Judicial Circuit had a 92 percent graduation rate. Also as chief judge, I pioneered the first web-based mapping program to track sexual offenders, thereby allowing parents to know when offenders move and where they live. Together with our court clerk, I spearheaded the digitization of court records to make them available through the internet. I was also responsible for major court projects to make our court facilities accessible to people with disabilities; to update and modernize the child support payment system; to streamline the jury process so that citizens were not unduly delayed from returning to family and work; and to improve domestic violence court services to protect families. When I learned the court had 44 children in foster care for many years because we had no lawyers to represent them, I approached the County Bar Association and volunteers stepped in and we resolved these cases in one year, placing most for adoption.

On the Appellate Court, I initiated a pilot project to allow the Illinois State's Attorneys Appellate Office and Office of the State's Appellate Defender to file electronically. I encouraged our court to increase the number of oral arguments, so that we now hear arguments in most cases. I also began our court's utilization of legal interns from law schools, paralegal programs, and high schools.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

As an adjunct associate professor at Southern Illinois University School of Medicine since 1994, I have taught a recurring course component in which the class reenacts a medical malpractice trial. I do not use a syllabus for this course component.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I hope to continue to teach on an adjunct basis for the Southern Illinois University School of Medicine. I have no other plans, commitments, or agreements to pursue outside employment, with or without compensation, during service with the court.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00860 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.783

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    If confirmed, I would recuse from cases involving my husband's law firm, my clerk's husband's law firm, and my brother-in-law's law firm, as I have during my service with the Illinois courts. I know of nothing else that would make me likely to recuse from a particular case, but I would carefully evaluate each case that came before me to determine any conflicts, potential conflicts, or potential appearances of conflict, and I would make disclosures or recuse as required.. In each such case, I would make disclosures and recuse myself as required by the rules and canons.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    If confirmed, I will carefully follow and apply the recusal statutes and Canon 3 of the Code of Conduct for United States Judges. I will seek advice from my colleagues as necessary. Upon review of a case, I would recuse myself in any proceeding in which my impartiality might be questioned.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    As a sitting judge since 1987, I have not engaged in the practice of law, including pro bono work. Instead, I have devoted time to law-related education programs for young people and made private charitable contributions to support serving the disadvantaged.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00861 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.784

I offered a program to our local schools for courthouse and jailhouse tours and in school or courthouse mock trials. I worked with the Illinois State Bar Assocation's Learn Program to establish a means for private tax-deductible donations to the schools to pay for class trips to the courthouse and jail. I regularly visit our grade, junior, and high schools to lecture and review and perform mock trials.

One of my most significant community contributions has been as a member of the Board of Directors and later as an active volunteer for the Sojourn Domestic Violence Shelter. While on the Board, I helped obtain a grant and a lawyer for the clients' representation. In recent years, I have continued to encourage pro bono representation of Sojurn's clients and have developed a program of educational seminars at a local library to aid unrepresented persons in family law matters.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senator Richard Durbin formed a bipartisan committee to screen candidates for judicial vacancies in our jurisdiction. I submitted a written application to the Committee in early November 2009. The Committee interviewed me in Springfield on January 9, 2010. Mine was among the names subsequently recommended to Senator Durbin by the Committee.

Senator Durbin interviewed me on January 23, 2010. I understand that Senator Durbin subsequently forwarded four names to President Obama, including mine. On February 26, 2010, I was contacted by staff from the Department of Justice and have had periodic conversations with them regarding paperwork and process. I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the Department of Justice on April 9, 2010. On June 17, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00862 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.785

OGE 10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Myerscough, Sue E.	U.S. District Court, Central District of Illinois	06/14/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Court Judge, Nominee	☑ Nomination, Date 6/17/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 05/31/2010
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. Courthouse 600 E. Monroe St. Springfield, IL 62701	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.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2010	Judges Retirement System, State of Illinois - no control
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Myerscough, Sue E.	Date of Report 06/14/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2008	State of Illinois, Appellate Judge salary	$154,373.00
2.	2009	State of Illinois, Appellate Judge salary	$161,950.00
3.	2010	State of Illinois, Appellate Judge salary	$64,185.74
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2009-2010	Livingstone, Mueller, O'Brien & Davlin, P.C. Law Firm, salary
2.		
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Myerscough, Sue E.	Date of Report 06/14/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Myerscough, Sue E.	06/14/2010

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
1. Prairie State Bank Accounts	C	Interest	M	T					
2. American General Annuity - A	A	Interest	K	T					
3. American General Annuity - B	A	Interest	K	T					
4. T. Rowe Price 2015 Target Fund	D	Int./Div.	M	T					
5. IRA #1	A	Int./Div.	J	T					
6. - Merrill Lynch Cash Retirement Reserve CSI									
7. - Merrill Lynch Blackrock Global Allocation Fd. Inc. A									
8. IRA #2	A	Int./Div.	K	T					
9. - Merrill Lynch Blackrock Global Allocation Fd. Inc. A									
10. - Merrill Lynch Blackrock Global Natural Resouce Trust A									
11. Country Life Whole Life	A	Interest	J	T					
12. Equitable Whole Life	A	Interest	K	T					
13. Nationwide Whole Life	B	Int./Div.	J	T					
14. Judges Retirement System, State of Illinois (no control)	A	Interest	M	T					
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Myerscough, Sue E.	Date of Report 06/14/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Myerscough, Sue E.	Date of Report 06/14/2010

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 Sue E. Myerscough

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

Sue Myerscough

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		234	132	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities-see schedule		268	964	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable —primary residence		180	825
Real estate owned—primary residence		204	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		348	000				
Cash value-life insurance		19	307				
Other assets itemize:							
Judicial Pension – State of Illinois		231	138				
Fixed Interest Annuities		53	470				
				Total liabilities		180	825
				Net Worth	1	178	186
Total Assets	1	359	011	Total liabilities and net worth	1	359	011
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a 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	
T. Rowe Price – 2015 Target Fund	$ 239,452
IRA: Cash Retirement Reserve CSI	3,250
IRA: Blackrock Global Allocation Fd. Inc. A	19,121
IRA: Blackrock Natural Resources Trust A	7,141
Total Listed Securities	$ 268,964

AFFIDAVIT

I, **SUE E. MYSERCOUGH**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/15/2010
(DATE)

Sue E. Myersc
(NAME)

OFFICIAL SEAL
JENNIFER L. JONES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-13-2011

Jennifer L Jones
(NOTARY)

Senator DURBIN. Thanks very much. Well, thank you all for the introductions of your family and friends who came with you today. I know that none of us come here by ourselves. There are many things that inspire us and those who stand alongside us on life's journey.

I will ask a few questions of a pretty general nature, because as Senator Sessions mentioned earlier and for the record, you have been investigated inside and out. You have been asked the questions by many and you have faced a lot of briefings and other things that prepare you undoubtedly for this hearing.

Some of the members who were not in attendance may have their own particular questions that they may ask.

Ms. Totenberg, one of the most important things for a judge is to make certain that they focus on the facts in the courtroom and the law and are not influenced by outside sources.

Can you give the assurance to this Committee that when you make your decisions, you will not be affected by anything said on NPR Radio?

[Laughter.]

Ms. TOTENBERG. I am very proud of my sister, who is not in the country right now, and I can assure you that I will not be influenced by her. We have—I have had to operate in the same legal world, in a larger sense, for some time, but I am very used to being extremely independent and I think that that's the—obviously, I have absolutely complete commitment to implementing the role of a district court judge on an independent basis and hearing the facts and making my own conclusions based on applicable law and without regard to NPR.

Senator DURBIN. Since there are no Republicans present—well, never mind.

[Laughter.]

Senator DURBIN. Now, you had an interesting case that you served on as a mediator involving a group of students who asserted a school district's prohibition of clothing depicting the Confederate flag violated their First Amendment rights. And I take it that this took place in Georgia, in Atlanta.

Ms. TOTENBERG. In south Georgia.

Senator DURBIN. As the mediator, you had to try to balance the school district's legitimate educational policy interest against the constitutional interests of the students.

Tell me what you took into consideration in that mediation and how it ended.

Ms. TOTENBERG. Well, of course, at one level, you never know what happens after you think you've got the settlement done. But what you had to take into consideration was that the school district has a very strong interest in making all students feel comfortable and be prepared to focus on the central mission of schools, education, and not to feel that they are subject to humiliation because of what somebody else may be wearing on their tee shirt.

And on the other hand, students have a real First Amendment right under *Tinker* to express their viewpoints. And so the question really was how to accommodate those interests so that it would not be an impossible situation for other students attending the school, for the school district to be in a position where it can say "We care

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00870 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

about all students and we want to make all students feel that they are learning and functioning in a nondiscriminatory, welcome educational environment.

And I think the resolution ultimately was some degree of control over what the nature of the tee shirts were that the students found acceptable, where they could express themselves, but that there would be some limits on what would be worn on their tee shirts.

Now, it's some years ago, so there may have been some other aspects of the resolution, as well. But I think that was really what we were trying to do and because it was a mediation as opposed to an arbitration, there was a real opportunity to work with people, to talk about what are these interests and how do you need to address these for the future.

Senator DURBIN. My background here does not say how it ended.

Ms. TOTENBERG. Well, that's pretty much how it ended, was that there was a—I don't know what—there might have been attorney's fees or anything else, but they had this resolution where they were going to agree; as far as I understood, that there would be some policy from the school district that could, to some extent, restrict clothing, which is normally allowed, in fact, in school districts to have clothing policies; but at the same time, some amount of expressions allowed on the clothing, but it cannot be offensive.

And so I think that really was the scope of what was going to be the expression on the tee shirts was the resolution.

Senator DURBIN. Judge Myerscough, you spent a number of years as a trial court judge, handling civil and criminal cases, and then on the appellate court for a number of years, as well, and now seeking to return to the trial level in the Federal courts.

I know you have thought through how that would change your approach on the bench. But I would like to ask you the question that I will ask the others, as well.

I had a gentleman named Scott Lassar, who was a U.S. attorney in Chicago, who was seeking reappointment and he came for an interview before me and Senator Carol Moseley Braun, and I asked him, in the Federal court system, in the criminal process, at what point are the scales balanced. At what point can the criminal defendant really believe that they have as much power as the prosecutor in terms of asserting their constitutional rights and asserting their innocence, which most do?

And he said to me, "When the jury is picked. Until the jury is selected, the government has all the power with grand juries, with investigations, with the things that can be asked of potential criminal defendants and witnesses." He said, "The tables are not balanced at that point. The scales aren't balanced until the jury is chosen and at that point, there is balance in the process."

What is our observation, having been witness to and part of that process for so many years?

Judge MYERSCOUGH. I disagree with him. I believe that the scales are balanced from the moment that party walks into my courtroom.

I've been a former teacher. I taught French and English. I was a litigator. I defended police officers and I defended doctors, lawyers, and then I went on the bench and I held every position there is in every docket at the trial court, whether associate judge, crimi-

nal, civil. And the last 12 years I've spent observing what happens in the trial court.

And I believe that what I can do in the courtroom is what I have done for the last 23 years, which is give every litigant my full attention, whether it's the government or it's the defendant, and apply the law to the facts and give that defendant—if it's a jury trial he wants, a jury trial. And then if he chooses to plead, which very often happens in Federal court, then I will apply, as instructed by the Supreme Court, the sentencing guidelines, the commentary to the guidelines, and then listen to the government and the defendant in imposing my sentence accordingly and explain the reasons for my sentence.

Senator DURBIN. I think the point he was driving at was before the courtroom, before the case comes to the courtroom, whether there is a balance or fairness in the process or whether there is more power on the government side.

So before the courtroom, before anyone comes before you, what is your impression of the process leading up to that?

Judge MYERSCOUGH. Well, there is substantially more manpower with the U.S. attorney's office. They're very talented prosecutors. They have a backup in their investigators that does not exist with the public defender's office.

But I have to say, at least in the Central District, in Springfield, in the county court and the U.S. attorney's office and the public defender's office, we have exceptional representation for defendants.

Senator DURBIN. Judge Boasberg, what is your impression?

Judge BOASBERG. I think that I would agree that the scales are not imbalanced to the extent that there are many practices that enable a defendant to even the scales. The government, of course, has to obtain an indictment through a grand jury process. They can't simply arrest someone or file a complaint. They actually have to get him indicted.

And as an assistant United States attorney who dealt with grand juries on a regular basis, I believe that many are skeptical, that many are interested, particularly in the District of Columbia, in hearing a great deal about the facts and the law before voting to indict.

After indictment, there's broad discovery under Rule 16. There are Brady obligations the government must comply with, which, again, I took seriously as a prosecutor and, if confirmed, would enforce as a judge. And then, of course, there are motions to suppress, motions in limine, and other different pleadings that the defense can file.

So that by the time the case is actually queued up for trial, a great deal has occurred and then if the playing field is not balanced at that point, it's the evidence that imbalances it rather than the procedures.

Senator DURBIN. Judge Shadid, you were a defense attorney before ascending to the bench. What is your impression?

Judge SHADID. My impression, Senator, and thank you for the question, is that you have to always keep in mind that this is a process and that the founding fathers thought of this process and built into the Constitution safeguards for criminal defendants in

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00872 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

the Fourth Amendment, the Fifth Amendment, and a number of others.

And those safeguards although maybe don't stop initially from a grand jury indictment or an arrest, but they are built in so that when a competent lawyer is appointed to represent the defendant, that the rules and the responsibilities of the government are in place to protect that person's rights and address any wrongs that may have occurred.

Senator DURBIN. Ms. Jackson, along that same line, I had an opportunity—we have an interesting tradition that is about 6 or 8 years old now that every 2 years, when a new Senate is elected, we have dinner with the Supreme Court.

I do not know who—I think Senator Daschle actually came up with the original idea. But it is an interesting trek across the street to gather in the hallway of the Supreme Court and to actually sit down with a Supreme Court justice for an informal evening.

I had an opportunity last year to sit with Justice Kennedy and I said to him at that point that I was going to be chair of the Crime Subcommittee of the Senate Judiciary Committee, which I chaired for a short time before Senator Specter took it over.

I said to him, "What do you think ought to be my priority? What should I look at when it comes to the criminal justice system in America, from your perspective?" And he said, "Look at our system of corrections, incarceration." He said, "There won't be a single justice here, I don't believe, who wouldn't agree with me that something needs to be done."

We incarcerate so many people in America under circumstances which many have challenged, and, of course, hope that each one has gone through a just process, reaching that conclusion. But for some reason, America has such a high level of incarceration in our institutions and there are serious questions, in his mind.

Now, I understand that a judge is not going to set the sentencing standards that the Congress is responsible for and is restricted in terms of evidence and the rules of evidence and the like. But what is your thought, as you reflect on your background as a prosecutor and a defense attorney, on those two elements?

Ms. JACKSON. I think my background leads me to a place where I see the role of the district court judge as ensuring that both sides get a completely full and fair hearing. I believe strongly in the importance of vigorous law enforcement, but I also believe strongly in the presumption of innocence and the rights of a defendant to be recognized at trial.

And fortunately, the policy question of what should be done about the corrections system was properly placed in your lap and not mine, but I will certainly be attentive to my role to make sure that if anyone is committed to that system, it would be after a scrupulously fair trial.

Senator DURBIN. I would like to ask, Ms. Totenberg, you served as a monitor or in a special master capacity on two Federal district courts.

Ms. TOTENBERG. Right.

Senator DURBIN. You were appointed by the DC district court to monitor a consent degree involving the city's special education system and you were appointed by the district court for the district

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00873 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

of Maryland to serve as special master in connection with litigation over the special education system in Baltimore.

How has your experience working in these capacities prepared you or given you some background that would be helpful as a district judge?

Ms. TOTENBERG. Thank you very much for the question. The experiences in total have given me a very deep understanding, in fact, of how to move cases, how to manage cases.

The opportunity, as I said in my introduction, of working with both Judge Garbis and Judge Friedman has been extraordinarily educational. We've talked about all aspects of the case. They are complex cases which involve a variety of phases, and I think that that breadth of experience in complex litigation with multiple parties and, frankly, ever-changing proceedings will be extremely helpful in handling some of the more challenging cases that do come into the Federal courts, whether they be in the area of antitrust or in mass tort cases or in class actions.

I think it's really invaluable experience and I feel I have been truly tutored by the best.

Senator DURBIN. Judge Boasberg, my staff had a question prepared here, which said you may or may not remember that I chaired your Senate nomination hearing a few years back, but you have already reminded me that you did and that I gave a book to one of your children at that time, and it is certainly a pleasure to see you here today.

You were confirmed after my hearing by a vote of 98–0, and I wish you the same good luck in this undertaking. But I asked you at that time in 2002, in your nomination hearing before the Committee on Governmental Affairs, about your thoughts on judicial temperament.

Well, here we are 8 years later and I would like to know what you think about what you have seen in a courtroom and how important the temperament issue is when it comes to the administration of justice.

Judge BOASBERG. Thank you, Senator. I do remember it well. In fact, the book that you gave my then 5-year-old son about Abraham Lincoln's top hat is in my briefcase today, although my now 14-year-old son, I think, is almost as tall as Abraham Lincoln without the hat.

It's been something that's obviously been extremely important to me throughout my time. I can say that I've never flown off the handle and held anyone in criminal contempt in the 8-plus years I've been a judge, and I think that judges who are best able to control their courtrooms are ones who don't threaten contempt all the time. And I can say that I haven't threatened it or issued any order of holding someone in criminal contempt in my time.

I think that it's not always easy for any of us, particularly those who have had young children, to be as patient as we would like to be all the time, but I have certainly endeavored to do so and have endeavored to cultivate such a reputation and would hope to continue that, if fortunate enough to be confirmed.

Senator DURBIN. Judge Myerscough, the issue of judicial temperament? You were a practicing attorney before you were on the bench.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00874 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

Judge MYERSCOUGH. I believe it's very important and I, luckily, walk in a long line of predecessors who have shown extreme judicial temperament. I would like to say I have followed in their footsteps with my own temperament. In the last 23 years, I have not held anyone in contempt.

But I think what's most important in terms of patience is the need to move the case should not outweigh the need to listen to the parties and to listen to the evidence in the case.

We do have a backlog, a terrible backlog, and it will be taken care of. I will work the extra hours to do that, but I will not do that at the expense of shortening the evidence that's to be presented in my courtroom.

Senator DURBIN. Judge Shadid, you faced that, did you not, when you faced the backlog in your own court?

Judge SHADID. I did. But if I may, I'm happy to hear Justice Myerscough offer to work the extra hours.

I did face this. We did have a backlog, it was pointed out earlier, and the matter was resolved by just, I think, paying attention to detail.

But more importantly or as importantly, I think there are a number of qualities that make a fine trial judge and temperament has to be one of them. I believe the trial courts are the gatekeeper for the public's first entry into the justice system or the judicial system and, as a result, they set the tone for the public's confidence in the system, and I think they do that best by even-handed, fair-minded disposition, with a level playing field.

Thank you.

Senator DURBIN. Ms. Jackson, you have been in the courtroom and seen it from both tables in terms of the issue of judicial temperament. What would you say?

Ms. JACKSON. Well, I think, certainly, my trial experience has given me a good reason to understand the importance of judicial temperament. Obviously, I have not served as a judge, but I would hope that what my background investigation has revealed is that of all the many things that can be said about me, that I am a real person and I relate to other people from all walks of life.

And I think that ability to connect and to understand will inform my judging, hopefully, inform my temperament and help me to achieve the goal that I have, which is to rule efficiently, because I think people are waiting for your rulings, and to rule clearly, because I think people need to understand them.

Senator DURBIN. Well, I thank you all for your patience and waiting while we recessed and returned. And I thank all the friends and family who have gathered today on your behalf.

The record is going to remain open for 1 week for additional letters, statements and questions from Committee members and I would ask you, if you receive those questions, to try to respond promptly. The process in the Judiciary Committee will undoubtedly be explained to you about matters coming on the Committee calendar and then most likely held over a week. So the sooner we can complete the record, the better and more likely that if there is a positive vote from the Committee—and I hope for all of you there will be—that we can move it to the floor for consideration before the end of this calendar year.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00875 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

I thank everyone for being here today. And this Committee will stand adjourned.

[Whereupon, at 4:07 p.m., the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00876 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

QUESTIONS AND ANSWERS

Responses of James E. Boasberg
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No, I do not agree with this perspective of constitutional interpretation.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: I believe that district judges must carefully follow constitutional interpretations articulated by the Supreme Court and their particular circuit. When faced with an issue of truly first impression, district judges should begin with the text of the Constitution and then use only those interpretive tools endorsed by the Supreme Court.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: I believe that district judges must carefully follow constitutional interpretations articulated by the Supreme Court and their particular circuit. When faced with an issue of truly first impression, district judges should begin with the text of the Constitution and then use only those interpretive tools endorsed by the Supreme Court.

4. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: If empathy means sympathizing with one party such that a judge fails to follow the law, then I believe it should not play a role in a judge's consideration of a case.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: The Supreme Court has held that the Commerce Clause is very broad; in some recent cases, however, such as *United States v. Morrison*, 120 S. Ct. 1740 (2000), and *United States v. Lopez*, 115 S. Ct. 1624 (1995), the Court has made clear that it is not unlimited. I would, if confirmed, apply that jurisprudence in evaluating any challenge brought to Congress's power under the Commerce Clause.

66720.793

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: In *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the Supreme Court applied the Second Amendment's protections to the states. In so doing, it reiterated that the holding in *District of Columbia v. Heller,* 128 S. Ct.2783 (2008), "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'" *Id.* at 3047.

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: As quoted above, *Heller* and *McDonald* recognized a number of limitations on individual gun possession, but they did not settle every question about the legality of possible restrictions on such possession. Those issues are currently being litigated all over the country, and, if confirmed, I would follow applicable precedent in determining the legality of any restrictions challenged before me.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: Justice Kennedy's analysis is binding precedent, and, if confirmed as a district court judge, I would follow it.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed as a district court judge, I would be required to follow the law as set forth by the Supreme Court. On Eighth Amendment questions, I would be guided by the framework articulated by the Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005), and other cases in which the Court has analyzed what constitutes "cruel and unusual punishment."

b. How would you determine what the evolving standards of decency are?

Response: Making a determination about evolving standards of decency would fall to the Supreme Court. If confirmed and facing the issue, I would be guided

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00878 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.794

by the Supreme Court's decisions and any framework it has articulated for making such determinations.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: As the Supreme Court has repeatedly held that the death penalty is constitutional, I do not believe a district judge could find it unconstitutional in all cases.

d. What factors do you believe would be relevant to the judge's analysis?

Response: As I do not believe a district judge could find the death penalty unconstitutional in all cases, I would not engage in such analysis.

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: It is not proper for a district court judge to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution, except in those very limited circumstances in which the Supreme Court has endorsed such reliance.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: District courts should only do so in the very limited circumstances where the Supreme Court or their circuit has endorsed such an approach.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed, I would consider foreign law only in those circumstances in which the Supreme Court has ruled it is appropriate to be considered.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: If confirmed, I would consider foreign law only in those circumstances in which the Supreme Court has ruled it is appropriate to be considered.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00879 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.795

Response: If confirmed, I would consider foreign law only in those circumstances in which the Supreme Court has ruled it is appropriate to be considered.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00880 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.796

Responses of James E. Boasberg
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **As a D.C. Superior Court Judge, you have had to make sentencing decisions using the District of Columbia's Sentencing Guidelines, which are similar to the Federal Sentencing Guidelines, and are also advisory.**

   a. **How much deference do you afford the D.C. Sentencing Guidelines?**

   Response: As a Superior Court judge, I give a great deal of deference to the D.C. Sentencing Guidelines. In fact, I have imposed sentences that are within the Guidelines in the vast majority of my felony cases.

   b. **If confirmed, do you anticipate affording the Federal Sentencing Guidelines the same level of deference?**

   Response: Yes, if confirmed, I expect to afford the Federal Sentencing Guidelines a great deal of deference.

   c. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the sentencing guidelines?**

   Response: When the Federal Sentencing Guidelines were mandatory, the U.S. Sentencing Commission enumerated particular circumstances in which judges were permitted to depart upward or downward. Although the Guidelines are no longer mandatory, I would, if confirmed, expect to consult those departure criteria in deciding whether to depart upward or downward.

   d. **Given that you served as a federal prosecutor when the guidelines were mandatory, and you have served as a judge under a system where the guidelines are advisory, what is your view regarding whether the current federal scheme, where the Guidelines are advisory, is producing consistent and fair sentencing from one defendant to the next?**

   Response: As a judge on the D.C. Superior Court, I have found the D.C. Sentencing Guidelines immensely helpful. Instead of starting from scratch in fashioning an appropriate sentence, I can refer to a presumptive sentencing range that has been determined by looking at the heartland of historical sentences. I and other judges on the Superior Court have thus greatly benefited from the Sentencing Guidelines and follow them in the vast majority of our cases, even though they are not mandatory. I would expect similarly consistent and fair sentencing under the Federal Sentencing Guidelines, which are also advisory, not mandatory.

66720.797

2. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

   a. **Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented?**

      Response: Judges should not work from a desired outcome in assessing the law and facts. Instead, they should follow the law and facts to whatever outcome they dictate.

      i. **Please discuss an example of a case where you have had to set aside your own desired outcome and rule based solely on the law.**

         Response: I have not presided over cases in which my desired outcome was contrary to the law.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

      Response: No.

      i. **If so, under what circumstances?**

         Response: N/A

      ii. **Please identify any cases in which you've done so.**

         Response: N/A

      iii. **If not, please discuss an example of a case where you have had to set aside your own values or policy preferences and rule based solely on the law.**

         Response: I have not presided over cases in which my preferences were contrary to the law.

   c. **During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

      Response: Yes, I agree with Justice Sotomayor.

3. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00882 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.798

Response: The Supreme Court in *District of Columbia v. Heller,* 128 S.Ct. 2783 (2008), and *McDonald v. City of Chicago,* 130 S. Ct. 3020 (2010), held that the Second Amendment bestows an individual right to bear arms. That is the law that I would follow if confirmed.

a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: In *District of Columbia v. Heller,* 128 S.Ct.2783 (2008), and *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020 (2010), the Supreme Court left open the question of what level of heightened scrutiny should apply to a Second Amendment challenge. When the Supreme Court or the D.C. Circuit determines the level of scrutiny, I will, if confirmed, follow that standard.

4. What is your view of the role of a judge?

Response: A judge should fairly and impartially uphold the law as it is written and apply it to the cases that appear before him or her.

5. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: With a few narrow exceptions, the Supreme Court has held that the death penalty does not constitute cruel and unusual punishment under the Eighth Amendment to the Constitution. I would, if confirmed, follow that determination.

6. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

Response: The Supreme Court has determined that the death penalty is a constitutional and acceptable form of punishment. I would, if confirmed, follow that determination.

7. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on September 22, 2010, from the Department of Justice's Office of Legal Policy. I prepared a draft of these answers, which I sent to OLP on September 24. I then discussed this draft with OLP staff that same day and submitted my final draft on September 26 for transmission to the Committee.

8. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00883 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.799

Responses of Susan L. Carney
Nominee to be United States Circuit Judge for the Second Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: The Constitution has a fixed text enumerating powers and establishing principles that do not change. Courts sometimes must apply the Constitution in new contexts, such as those presented as our society develops new technology. But the Constitution itself may be altered only the through the formal amendment process.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: The process of Constitutional interpretation by the courts is adjudicative rather than transformative. It is the text of the Constitution, as interpreted by the Supreme Court of the United States, that lower courts must apply to disputes properly presented to them.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: The Constitution is not changed by social movements, legislation, and historical practice.

4. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: I do not believe that empathy should play a role in a judge's decision-making process, or application of the law to the facts of a case.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: In *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court articulated limits on Congress's power to legislate under the Commerce Clause. Therefore, not all transactions involving the exchange of money are subject to Congress's Commerce Clause power .

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

66720.800

Response: In the recent *Heller* and *McDonald* decisions, the Supreme Court has held that the Second Amendment establishes an individual's right to bear arms throughout the United States. *See City of Chicago v. McDonald*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). *Heller* allows that laws forbidding possession of firearms by convicted felons and the mentally ill, and laws prohibiting the carrying of firearms in "sensitive places such as schools and government buildings" are constitutionally permissible. *Heller,* 128 S. Ct. at 2816-17.

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: Please see my answer above.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: As a Court of Appeals judge, I would be bound by the Supreme Court's ruling in *Roper v. Simmons*. I would not look to "evolving standards of decency" in constitutional interpretation except as instructed to do so by the Supreme Court. My personal opinion would not affect how I carry out my obligation to apply that precedent.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed, I would not look to general societal understanding in interpreting the Eighth Amendment except if and as instructed to do so by the Supreme Court.

b. How would you determine what the evolving standards of decency are?

Response: I would follow Supreme Court precedent and reasoning if required to address that question.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The law of many states provides that the death penalty may be imposed for certain crimes. The Supreme Court has held the death penalty to be constitutional. It would therefore be improper for any inferior judge to make such a finding.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00885 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.801

d. What factors do you believe would be relevant to the judge's analysis?

Response: Please see my answer to (c), above.

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: I do not believe that contemporary foreign or international laws or decisions control the meaning of the United States Constitution.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: It is not the role of judges to make policy decisions and therefore it is not appropriate for judges to look to foreign countries for "wise solutions" and "good ideas."

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see my answer to (a), above.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: Our laws should be interpreted with reference to their text and Congressional intent and by using standard tools of statutory construction. Only if Congress had looked to foreign laws in enacting a statute or if the Supreme Court directed that foreign law should play a role (as such extraterritorial law might in certain treaty questions, for example) should those laws play a role in courts' interpretation of U.S. laws.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: As a Court of Appeals judge, I would not expect to consider foreign law when interpreting the amendments to the Constitution.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00886 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.802

Responses of Susan L. Carney
Nominee to be United States Circuit Judge for the Second Circuit
to the Written Questions of Senator Jeff Sessions

1. **In your current role as Deputy General Counsel at Yale, can you describe generally, without revealing any privileges, any significant litigation that you have handled or for which you have been responsible?**

   Response: As Acting General Counsel for half of 2008, I oversaw and worked with inside and outside counsel on all of Yale University's litigation. That docket included real estate-related litigation, employment-related litigation, and a wide variety of other suits. During the rest of my twelve-year tenure at Yale (in nine of which I have served as Deputy General Counsel), I have worked closely with the General Counsel in the management of a number of significant cases. For example, at present I am the primary day-to-day manager working with outside counsel on litigation in federal court involving the contested ownership of an important piece of art for which the monetary value has been estimated to be over one hundred million dollars. In 2008 and 2009, I was the primary internal manager working with outside counsel on proceedings in Connecticut courts concerning the reformation of a testamentary trust that established the University's rights with regard to certain Connecticut property used annually for a well-known University program. Earlier, I played that role in a significant, longstanding dispute involving the ownership of patents under the Bayh-Dole Act, which led to an appeal to and favorable disposition from the Second Circuit.

2. **At your hearing, in response to a question from Senator Durbin, you testified that your work on intellectual property issues, including patent cases, would enhance your perspective as a federal judge on the Circuit Court of Appeals. Given that the Federal Circuit has exclusive jurisdiction over cases arising under the patent laws, of what relevance is your patents background to your qualification to serve on the Second Circuit?**

   Response: Although the Federal Circuit is charged with exclusive jurisdiction over cases arising under the patent laws, patent law may be involved in complex commercial disputes and in other matters properly before the Second Circuit. For that reason, I mentioned it in passing in my response to Senator Durbin's question about my familiarity with intellectual property law. For example, the Second Circuit has recently addressed the legality under antitrust law of so-called "reverse exclusionary payments" by patent holders to alleged infringers. *See Ark. Carpenters Health & Welfare Fund v. Bayer AG,* 604 F.3d 98 (2010); *see also In re Tamoxifen Citrate Antitrust Litig.*, 466 F.3d 187, 190 (2d Cir. 2006)("This appeal . . . requires us to address issues at the intersection of intellectual property law and antitrust law."). In another instance, the Second Circuit has recently joined other Circuit Courts of Appeals in applying, in a copyright setting, the test for when a preliminary injunction may issue that was established by the Supreme Court in a patent law case. *See Salinger v. Colting,* 607 F.3d 68 (2010)(holding that the Second Circuit's "long-standing standard for preliminary injunctions in copyright cases" was

66720.883

abrogated by the patent decision in *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006)).

3. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.

Response: The Supreme Court ruled in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), that the Second Amendment establishes an individual right to bear arms. It affirmed and extended that ruling in *McDonald v. Chicago*, 130 S. Ct. 3020 (2010). If I am confirmed as a Circuit Judge, the *Heller* and *McDonald* decisions would control my analysis of the Second Amendment.

a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court stated in *Heller*, 128 S. Ct. 2783, 2817 n.27, that gun laws shall be evaluated against a standard stricter than rational-basis scrutiny and, if I am confirmed, I would follow that precedent.

4. What is your view of the role of a judge?

Response: A judge's role is to interpret and apply the law. A court of appeals judge must do so by applying the appropriate standard of review in his or her consideration of decisions that have been appealed, and by closely adhering to Supreme Court precedent and the prior decisions of the relevant Circuit, looking to other Courts of Appeals when useful. A judge is bound to carry out these tasks objectively, impartially, and to the best of his or her ability.

5. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?

Response: No.

6. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?

Response: No.

7. Please describe with particularity the process by which these questions were answered.

Response: I drafted my answers to these questions. I received comments on my draft answers from the U. S. Department of Justice. I prepared my final answers.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00888 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.804

8. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00889 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.805

Responses of Amy B. Jackson
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No. I do not believe that the Constitution is constantly evolving as society interprets it.

   Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?

   Response: I am not familiar with the context in which this statement was made or what Justice Brennan has said about how the Constitution's purpose could or should inform its interpretation. A District Judge should look to the language of the Constitution and to Supreme Court and appellate court precedent interpreting that language in an effort to apply the principles embodied in the Constitution to the circumstances presented in a particular case.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: I believe that it is the role of the legislature, and not the courts, to determine whether and how evolving social views should be incorporated in law.

3. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: No.

4. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: The Supreme Court has held that the scope of the Commerce Clause is broad, but not unlimited. If I am confirmed and I am presented with a case involving the application of the Commerce Clause, I would carefully read the statute that is the subject of the lawsuit and apply the relevant Supreme Court and D.C. Circuit precedents, including *United States v. Lopez,* 514 U.S. 549 (1995), and *Morrison v. United States,* 529 U.S. 598 (2000).

66720.806

5. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: In *District of Columbia v. Heller,* 128 S. Ct. 2783 (2008), the Supreme Court held that the Second Amendment protects an individual right. In *McDonald v. City of Chicago, Illinois,* 130 S. Ct. 3020, (2010), the Court stated that the *Heller* decision "did not cast doubt on such longstanding regulatory measures such as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools or government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'" The Court did not specify what other limitations remain, if any.

   a. **Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

   Response: If I am confirmed and I am presented with a case involving the interpretation of the Second Amendment, I would carefully read the statute that is the subject of the lawsuit to understand its terms and its scope, and apply Supreme Court and D.C. Circuit precedents, including *Heller, McDonald,* and any future cases addressing this issue.

6. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: If confirmed as a District Court judge, I would be bound by the holding and the analysis set forth in the majority opinion in *Roper.*

   a. **Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"**

   Response: In *Roper,* the Supreme Court stated: "we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." 543 U.S. at 560 – 61, quoting *Trop v. Dulles,* 356 U.S. 86, 100-101 (1958)(plurality opinion). If confirmed as a District Judge, I would be bound to follow these and other Supreme Court precedents and any applicable decisions of the U.S. Court of Appeals for the District of Columbia Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00891 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.807

b. How would you determine what the evolving standards of decency are?

Response: If confirmed as a District Judge, I would follow the directives set forth in Supreme Court precedent as to what factors should be considered in making this determination.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court determined that the death penalty is constitutional, and it has reiterated that determination in many subsequent opinions. A District Judge would be bound by those precedents.

d. What factors do you believe would be relevant to the judge's analysis?

Response: Any analysis should be conducted by consideration of the factors set forth in Supreme Court and appellate court precedent.

7. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: It would only be proper to rely on foreign or international law in those circumstances in which Supreme Court precedent, D.C. Circuit precedent, or a statute requires the District Court to do so.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed as a District Judge, I would only consider foreign law in those circumstances in which it is required by Supreme Court precedent, D.C. Circuit precedent, or a statute.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I am not aware of any circumstance where that would be the case.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00892 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.808

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: If confirmed as a District Judge, I would follow Supreme Court precedent to ascertain in what circumstances, if any, foreign law should be taken into consideration in interpreting any Constitutional amendment.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00893 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.889

Responses of Amy B. Jackson
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Al Franken

1. **In March 2006, you gave a speech to the Federal Practice Institute where you described more aggressive government enforcement of corporate criminal law. In this speech, you implied that the government has crossed a line, that it is asking too much of corporate defendants. Specifically, you said:**

> **What we used to consider cooperation is considered nothing. And what we used to consider putting up a defense is now characterized as obstructing justice. [...] Why? Why can't federal prosecutors – with the awesome reach of their subpoena and grand jury power – why can't they do their own jobs anymore? [...] Instead of building cases for trial, [...] [they're] putting enormous pressure on you to put enormous pressure on your officers and employees to coerce pleas [and] cooperation. [I] can't understand why self respecting [sic] prosecutors want to take this route.**
>
> **Only answer: because they can.**

Is the Department of Justice really being too tough on corporations?

Response: No. As a former federal prosecutor, I appreciate the importance of vigorous criminal enforcement and corporate compliance.

The intent behind the comments described above was not to question the need for tough criminal prosecution of corporate crime, but to discuss a policy that was being used at the time to achieve those ends that affected individual employees. In particular, I was addressing a Department of Justice policy that was facing strong criticism at the time not only from the defense bar, but also the ABA, business leaders, the ACLU, and Members of Congress from both parties, including the bipartisan leadership of the Senate Judiciary Committee. In response to these concerns, the policy has since been rescinded.

At that time, Departmental policy governing whether prosecutors should seek criminal charges against the business entities themselves -- as opposed to just the individuals involved -- was set out in a 2003 memorandum issued by the then Deputy Attorney General, Larry D. Thompson, entitled: Principles of Federal Prosecution of Business Organizations. The "Thompson Memorandum," as it came to be known, listed a series of factors prosecutors should consider when making a charging determination including the company's "willingness to cooperate in an investigation of its agents." The Memorandum stated that the factors to be considered in assessing the "adequacy" of that cooperation should include: whether the company waived its attorney-client privilege and attorney work product protection, and whether it was advancing attorneys' fees for the individuals under investigation or providing them with information under a joint defense agreement.

After I described the Thompson Memorandum, I made the comments based on the notes that are excerpted from page 8 of my outline above. Speaking as a former federal prosecutor, I asked why prosecutors would need to call for attorney work product given the investigative tools and the skill they had at their disposal. The tone of the remarks reflected the serious concerns at that time that were animating many defense attorneys who represented individuals and employees at that time, as well as others. But I did not suggest at any point that corporations should not fully cooperate with criminal investigations, or that culpable individuals should not be punished.

In response to these widespread concerns, the Department of Justice revised the policy in the summer of 2008. *See* http://www.justice.gov/opa/pr/2008/August/08-odag-757.html (DOJ press release announcing the revision of the Thompson memo). The Principles of Federal Prosecution of Business Organizations adopted in 2008 under Attorney General Mukasey remain the policy today. *See U.S. Attorneys Manual,* 9-28.710, 720, and 730.

These revisions covered all of the concerns that I raised in my talk in March of 2006.

After everything we have seen in this most recent financial meltdown, would you say these same words today?

Response: No. The revision of the Department's policies concerning corporate cooperation has alleviated all of the concerns I was expressing at the time.

2. **I'm concerned that our courts have become far too cozy with big business. The Roberts Court is an exemplar of this. This is a Court that has made it easier for corporations to discriminate against older Americans. It's made it easier for corporations to keep their employees out of court through secret, binding arbitrations. And it's made it harder for investors to recover money from the firms that have defrauded them.**

What do you think is the proper relationship between the federal courts and corporations?

Response: The role of the federal courts is to fairly apply all statutory and Constitutional provisions and to adhere to the law, including the law governing corporations as it is set forth by Congress. District Court judges are bound to follow the precedents of the Supreme Court and the Courts of Appeals in performing that function. It is not the role of District Judges to accord special rights not found in law to corporations who appear before them. It is the role of Congress to expand or restrict the rights and obligations of corporations or their employees.

Responses of Amy B. Jackson
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **During the 2004 presidential election, you co-authored an article entitled, "[Question]: Who's Better for Lawyers? [Answer]: John Kerry," published in the *Legal Times*.**

   a. **Can you explain what you meant when you said that President Bush had no commitment to the law and that he "view[ed] the legal profession with contempt"?**

   Response: In retrospect, the language of the article was too harsh. It was meant to suggest that the courts should play a role in the resolution of issues such as those ultimately addressed in *Haamdi v. Rumsfeld,* 542 U.S. 507 (2004) and *Boumediene v. Bush,* 553 U.S. 723 (2008). I think that the tone of the article can be attributed to the fact that it was a political piece, written on the eve of a close election, and also to the fact that it was the product of joint authorship. The piece stands out among my thirty years' worth of writings and public statements not only because of its tone, but because it was the only political piece that I played any role in writing. When one gets past the rhetoric of the article, I believe that at bottom it expresses the view that a President should appoint judges who will follow the rule of law.

   b. **Do you still stand by your statement that "the Bush presidency was secured through the legal process rather than the electoral process"?**

   Response: The electoral process and the legal process were both involved in the election of President Bush.

   c. **You said of President Bush's appointment of John Ashcroft as Attorney General:**

   > **"When Bush selected his attorney general, he chose not a distinguished leader of the bar with the stature and experience appropriate to the position, but an undistinguished politician who could not win against a deceased opponent. The choice of John Ashcroft . . . was a stick in the eye of the American electorate . . . ."**

   Do you still stand by that statement?

   Response: No. I have a great deal of respect for the manner in which Attorney General Ashcroft sought to perform his duties during a very difficult period for the country.

66720.812

d. You also wrote that since the terror attacks of September 11th, "the [Bush] administration has most clearly engaged in a brazen disregard of the law . . . [pursuing] policies that condoned the torture of enemy prisoners in violation of international treaties." You also blamed Bush Administration policies for "Muslim hatred of the United States." Do you still stand by those statements?

Response: I did not and I do not blame the Bush Administration for the criminal actions of terrorists who target innocent civilians. At the time of the article, I was troubled by reports of torture of prisoners held by the United States, and I was impressed by statements by Sen. John McCain, Sen. Lindsay Graham, and others that such tactics were not consistent with American values and that they could ultimately be ineffective or counter-productive.

e. Do you still believe that the recess appointments of Judges Pickering and Pryor, and the elevation of Judge Bybee, were a "circumvention of the democratic process"?

Response: I have a great deal of respect for the Senate's role in the advice and consent process, and I acknowledge that recess appointments are fully constitutional.

2. Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.

a. If confirmed, how much deference will you afford the Sentencing Guidelines?

Response: If I am confirmed, the Guidelines will assist me in achieving the important goals of uniformity and predictability in sentencing. Under 18 U.S.C. §3553 and Supreme court precedent, including *Rita v. United States,* 551 U.S. 338 (2007), the Guidelines serve as an important benchmark and the starting point for the sentencing determination. If confirmed, I would look to the Guidelines in accordance with the sentencing statute and the relevant Supreme Court precedents.

b. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes.

c. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: A sentence should be based upon a consideration of all of the factors set forth in 18 U.S.C. §3553, including proper consideration of the applicable Guideline range in accordance with the Supreme Court's directives. As the

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00897 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.813

Supreme Court has held, any variance from the applicable Guideline range must be supported by clearly stated reasons.

3. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

   a. **Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

      Response: Judges should base their decisions solely on the law and facts.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

      Response: No.

   c. **During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

      Response: Yes.

4. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

   Response: In *District of Columbia v. Heller,* 128 S. Ct. 2783 (2008), and *McDonald v. City of Chicago, Illinois,* 130 S. Ct. 3020 (2010), the Supreme Court held that the Second Amendment confers an individual right.

   a. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

      Response: The Supreme Court has indicated that it should be a higher level of scrutiny than rational basis scrutiny. *See District of Columbia v. Heller,* 128 S. Ct. 2783, 2817 n. 27 (2008).

5. **What is your view of the role of a judge?**

   Response: The role of a District Court judge is to apply the law set forth in the Constitution, statutes, and Supreme Court and appellate court precedent to the particular facts of each case in a fair and impartial fashion. When ruling on the legal questions presented to the court for decision, a judge has the responsibility to decide on a timely basis and to articulate the reasons for the decision with clarity. A District judge presides over trials, ruling on evidentiary questions and instructing the jury as to the law to be applied, and a judge can serve as the finder of facts

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00898 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.814

during motions and bench trials. It is the role of a judge to perform all of these tasks with objectivity, intellectual honesty, appropriate temperament, efficiency, sound judgment, and clear reasoning.

6. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: The Supreme Court has held that the death penalty comports with the Eighth Amendment except in certain specific circumstances.

7. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

Response: Congress has determined that certain federal crimes should be punishable by the death penalty, and the Supreme Court has held that the death penalty comports with the Eighth Amendment. If confirmed as a District Court judge, I would be bound by federal law and Supreme Court precedent.

8. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Department of Justice Office of Legal Policy on Wednesday, September 22, 2010, and carefully drafted answers to them myself. I reviewed those answers with representatives of the Department of Justice and requested that they be submitted to the Committee.

9. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00899 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.815

Responses of Sue E. Myerscough
Nominee to be United States District Judge for the Central District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No. I do not believe the Constitution is a living document that is constantly evolving as society interprets it.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: I do not know the context in which Justice Brennan said this. Constitutional interpretation should take into account the text of the Constitution, the intent of the framers, and Supreme Court precedent.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No. The text of the Constitution, the intent of the framers, and binding precedent from the Supreme Court guide judicial decision-making.

4. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: No. The court applies the law to the facts.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: The Supreme Court in United States v. Lopez, 514 U.S. 549 (1995), set forth the test for determining whether a particular transaction is subject to the Commerce Clause: whether the activity falls within the channels of interstate commerce, instrumentalities of, or persons or things in, interstate commerce, or activities having a substantial relation to interstate commerce. The Supreme Court has consistently held the Commerce Clause power is not unlimited. "But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits." Lopez, 514 U.S. at 557. More recently, the Supreme Court has imposed additional limits on the Commerce Clause. United States v. Morrison, 529

66720.816

U.S. 598 (2000). Should I be confirmed as a district judge, I will follow the Supreme Court's analysis in these cases.

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: What limits remain on the Second Amendment remain open but for those limits expressly set forth by the Supreme Court as presumptively lawful regulations in District of Columbia v. Heller, 128 S. Ct. 2783 (2008). "[N]othing in our opinion should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Heller, 128 S. Ct. at 2816-17.

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: Both Heller and McDonald specifically found city ordinances unconstitutional that prohibited handgun possession in the home. The Supreme Court has left open for future evaluations examples of other limits on the Second Amendment. But the Supreme Court made clear that core protections are conferred by the Second Amendment. "In Heller, however, we expressly rejected the argument that the scope of the Second Amendment right should be determined by judicial interest balancing, [citation] and this Court decades ago abandoned 'the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights.' [Citation.]" McDonald, 130 S. Ct. at 3047.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: Having been expressed in an opinion by the Supreme Court in Roper v. Simmons, 543 U.S. 551 (2005), if confirmed as a district court judge, I would be bound by that precedent.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: In Roper, the Supreme Court stated that "we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00901 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.817

punishments are so disproportionate as to be cruel and unusual." 543 U.S. at 560-61 (quoting Trop v. Dulles, 356 U.S. 86, 100-01 (1958) (plurality opinion)). If confirmed as a district judge, I would be bound by precedent of the Supreme Court.

b. How would you determine what the evolving standards of decency are?

Response: First I would determine whether the Supreme Court or the Seventh Circuit had decided whether the punishment in question violated the Eighth Amendment. Such precedent would control. In the absence of such precedent, I would research Supreme Court case law to determine which factors govern the Eighth Amendment analysis and how to implement those factors.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: No. The Supreme Court has rejected challenges to the death penalty on many occasions. If confirmed as a district court judge, I would follow that precedent.

d. What factors do you believe would be relevant to the judge's analysis?

Response: As set forth in Question 7(b), and further the Supreme Court has held the death penalty is not unconstitutional in all cases. Therefore, a district court judge would have no occasion to apply the "evolving standards of decency."

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No. The meaning of a constitutional provision is determined by its text and history and by interpretations handed down by the Supreme Court.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Under no circumstances.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00902 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.818

Response: Pursuant to Supreme Court precedent, only rarely are courts to consider foreign materials.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00903 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.819

Responses of Sue E. Myerscough
Nominee to be United States District Judge for the Central District of Illinois
to the Written Questions of Senator Jeff Sessions

1. **During your 2002 campaign for the Illinois Supreme Court, you were quoted as saying that, "[t]he [Illinois] Supreme Court is a social service agency, and they have too long ignored that role." Please explain what you meant by that statement.**

   Response: My comment was directed solely to the management role of the Supreme Court over adult and juvenile probation services as delegated by the legislature. Probation services monitor criminal offenders and incarcerate juveniles within the community. Funding for court services has been dramatically cut in the last 25 years.

2. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

   a. **Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

      Response: Judges should base their decisions only on the law and facts presented.

      i. **Please discuss an example of a case where you have had to set aside your own desired outcome and rule based solely on the law.**

         Response: I do not have a desired outcome when I enter the courtroom. However, among the more difficult cases are those in which mental health patients must be released even though potentially dangerous because they did not receive their statutory notices. In those cases where the patients did not receive statutory notice, I have followed the law and reversed the commitments.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

      Response: No.

      i. **If so, under what circumstances?**

         Response: None.

      ii. **Please identify any cases in which you have done so.**

         Response: None.

iii. **If not, please discuss an example of a case where you have had to set aside your own values or policy preferences and rule based solely on the law.**

Response: The mental health cases referenced in 2(a).

c. **During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

Response: Yes.

3. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

Response: Significant deference. The Supreme Court has made clear in Nelson v. United States, 129 S. Ct. 890 (2009), that the sentencing guidelines are the guidepost for any sentence. "So modified, the federal sentencing statute . . . makes the Guidelines effectively advisory. It requires a sentencing court to consider Guidelines ranges[.]" United States v. Booker, 125 S. Ct. 738, 757 (2005).

b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: Only rarely where recommended by the U.S. Attorney and that recommendation is supported by the statutory sentencing factors.

4. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court decisions in District of Columbia v. Heller, 128 S. Ct. 2783 (2008) and McDonald v. City of Chicago, 130 S. Ct. 3020 (2010) hold that the Second Amendment confers an individual right.

a. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00905 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.821

Response: In Heller and McDonald, the Supreme Court found a right under the Second Amendment must be treated in the same manner as any fundamental right identified in the Bill of Rights. The Second Amendment right to bear arms should therefore not be treated as a "watered down right" subject to "judicial interest balancing." See Heller, 128 S. Ct. at 2821; McDonald, 130 S. Ct. at 3047.

5. **What is your view of the role of a judge?**

Response: The role of a judge is to apply the law to the facts.

6. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court has found the death penalty constitutes cruel and unusual punishment in certain circumstances as applied to juveniles (Roper v. Simmons, 125 S. Ct. 1183 (2005)), low intellectual functioning (Atkins v. Virginia, 536 U.S. 304 (2002)) and in nonhomicide felonies (Kennedy v. Louisiana, 128 S. Ct. 2641 (2008)).

7. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes. Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the United States Court of Appeals for the Seventh Circuit.

8. **Please describe with particularity the process by which these questions were answered.**

Response: After reviewing the legal issues presented, I prepared my answers after careful consideration of each question. I discussed my answers with representatives of the Department of Justice and requested my answers be forwarded to the Committee.

9. **Do these answers reflect your true and personal views?**

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00906 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.822

Responses of James E. Shadid
Nominee to be United States District Judge for the Central District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: I do not know what Justice Brennan meant, or in what context, he made that statement. I believe that when presented with a case that requires application of the Constitution to a specific factual situation, a district court judge is guided by the text of the Constitution and the precedent as established by the United States Supreme Court and the appeals courts.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: I believe a district court judge is guided by the text of the Constitution and the precedent as established by the United States Supreme Court and the appeals courts.

4. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: No.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: No. The Supreme Court has identified guidelines, and limitations, for determining the scope of Congress' authority. *United States v. Lopez, 514 U.S. 549 (1995),* and *United States v. Morrison, 529 U.S. 598 (2000).*

66720.823

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The Supreme Court has left open what limitations remain except for those expressly identified.

a. **Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

Response: The Supreme Court has stated there is an individual right to bear arms. However, that right is not unlimited. The Supreme Court has not stated what those other limitations are.

7. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh Circuit.

a. **Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"**

Response: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh Circuit.

b. **How would you determine what the evolving standards of decency are?**

Response: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh Circuit.

c. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

Response: No.

d. **What factors do you believe would be relevant to the judge's analysis?**

Response: I would look to the standards as set out by the Supreme Court and the Seventh Circuit.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00908 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.824

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, unless consideration has been directed by statute or precedent from the Supreme Court or Seventh Circuit.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I would do so only if consideration has been directed by statute or precedent from the Supreme Court or Seventh Circuit.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00909 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.825

Responses of James E. Shadid
Nominee to be United States District Judge for the Central District of Illinois
to the Written Questions of Senator Jeff Sessions

1. **In your questionnaire for judicial candidates submitted to the *Peoria Journal Star* in 2002, you explained your judicial philosophy this way:**

> **"If we are going to be trial judges then at the end of our day, or task, some human being is going to be affected and if our rulings will affect people's lives and people may change their lives because of what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."**

You then went on to compare your judicial philosophy to Justices O'Connor, Souter and Stevens. Does this statement accurately reflect your judicial philosophy?

Response: My judicial philosophy is to apply the law to the facts in each case, one case at a time, on a level playing field, then clearly articulate those findings of fact and conclusions of law to the parties.

2. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

   a. **Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

   Response: I believe judges should base their decisions solely on the law and facts presented.

      i. **Please discuss an example of a case where you have had to set aside your own desired outcome and rule based solely on the law.**

      Response: None.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

   Response: No.

      i. **If so, under what circumstances?**

      Response: None.

66720.826

ii. Please identify any cases in which you have done so.

Response: None.

iii. If not, please discuss an example of a case where you have had to set aside your own values or policy preferences and rule based solely on the law.

Response: None.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

3. Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.

a. If confirmed, how much deference will you afford the Sentencing Guidelines?

Response: I will give the Sentencing Guidelines great deference.

b. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes

c. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: The Supreme Court requires that district judges consider the Guidelines as "the starting point and the initial benchmark" in every sentencing, *Gall v United States, 552 U.S. 38, 49 (2007)*, in order to achieve Congress's "basic goal in passing the Sentencing Act . . . in the direction of increased uniformity," *Booker v United States, 543 U.S. 220, 253 (2005)*.

I would review a defendant's request for departure after a determination of the appropriate guideline range and consideration of relevant Supreme Court and Seventh Circuit cases that might indicate special circumstances warranting departure.

4. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00911 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.827

Response: I believe the Second Amendment is an individual right. The Supreme Court has stated the Second Amendment is an individual right in *District of Columbia v. Heller, 128 S. Ct. 2783 (2008). See also McDonald v. Chicago*, 130 S. Ct. 3020, 3048 (2010) (describing "the individual right that *Heller* recognized").

a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court in *District of Columbia v. Heller, 128 S. Ct. 2783 (2008)* stated that a heightened standard of scrutiny should be applied to challenges against gun laws.

5. What is your view of the role of a judge?

Response: My view of the role of a judge is to first remember that the case is not about the judge. It is about the parties appearing before the judge. I believe the judge sets the tone for the public's confidence in the judicial system and by treating all litigants fairly, on a level playing field, and making rulings based on the facts and the law of the particular case, the public's confidence in the system is maintained.

6. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: No. The United States Supreme Court has ruled that as a general matter the death penalty does not constitute cruel and unusual punishment.

7. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

Response: Yes. The United States Supreme Court has ruled that the death penalty is constitutional and acceptable except in those limited instances in which the Supreme Court has ruled otherwise.

8. Please describe with particularity the process by which these questions were answered.

Response: I received the Questions for the Record from the Department of Justice on September 22, 2010. I drafted answers to the questions and then consulted with members from the Department of Justice. Thereafter, I provided a final version for transmittal to the Committee.

9. Do these answers reflect your true and personal views?

Response: Yes

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00912 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.828

Responses of Amy Totenberg
Nominee to be United States District Judge for the Northern District of Georgia
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No. The text of the Constitution is fixed, absent amendment through the Article V amendment process. The Constitution establishes a structure of enduring principles of governance as well as rights identified in the Bill of Rights and other Amendments to the Constitution. The Framers intended the Constitution's principles to be applied to changing circumstances over the course of American history, even though they naturally could not envision or predict these circumstances.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: My understanding of this passage from Justice Brennan's speech is that he was suggesting that the Supreme Court's judicial interpretation should be guided by the enduring principles established by the Constitution and its Amendments. Specifically, Justice Brennan was referring in this paragraph to the intent of the Civil War Amendments (Thirteenth, Fourteenth and Fifteenth Amendments) to abolish slavery, guarantee equal protection of law, and establish the right of citizens to vote without regard to race, color, or previous condition of servitude. If confirmed, in my limited role as a District Court judge I would consider a case involving a constitutional question by reviewing the text of the constitutional provisions at issue and the legal analysis required by applicable binding precedent of the Supreme Court and the Eleventh Circuit.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: In applying the Constitution to the specific facts of a particular case, a district court judge should be solely guided by the text of the Constitution, binding precedent of the Supreme Court and appellate court, and if necessary and appropriate, the record reflecting the intent of the constitutional or legislative provisions at issue. In certain limited constitutional case contexts, binding Supreme Court precedent has considered legislative norms in the United States or relevant historical practices, as evident in the Court's decisions in *District of Columbia v. Heller*, 128 U.S. 2783 (2008) and *Atkins v. Virginia,* 536 U.S. 304 (2002).

66720.829

4. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?

Response: When reaching a decision, a judge must put aside whatever sympathy the judge may feel for the position of a specific litigant. To the extent that empathy is defined as the capacity to understand the position and circumstances of witnesses and parties, this quality could contribute to the judge's performance of the responsibility to listen to and understand evidence presented in a given case. However, empathy should not play a role in the judge's application of the law to the facts presented.

5. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: The Supreme Court's decisions in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), identify the three categories of activity covered by the Commerce Clause: activity involving the channels of interstate commerce; instrumentalities of, or persons or things, in interstate commerce; and, activities having a substantial relation to interstate commerce. An exchange of money may therefore not fall under the coverage of the Commerce Clause for a variety of reasons. Specifically, the exchange may involve purely localized transactions between individuals or entities that are solely within one state, community, or family and bear no substantial relation to interstate commerce or involve neither the channels nor instrumentalities of commerce.

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: The Supreme Court has left open the question of what limitations on the Second Amendment right, if any, would pass constitutional muster beyond those prohibitions the Court expressly identified as presumptively lawful regulatory methods. These methods include "longstanding prohibitions on the possession of firearms by felons and the mentally ill or laws forbidding the carrying of arms in sensitive places such as schools and government buildings or laws imposing conditions and qualifications on the sale of arms." *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816-2817 (2008).

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: The Court's decisions in these cases specifically held unconstitutional City ordinances that prohibited handgun possession in the home. While the Court left open for future evaluation other applications of the Second Amendment, it made clear that the core protection conferred by the Second Amendment must be recognized and not "watered-down" by any form of "interest-balancing." *McDonald v City of Chicago*, 130 S.Ct. 3020, 3048-3050 (2010); *District of Columbia v. Heller*, 128 S.Ct. 2783, 2821 (2008).

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00914 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.830

7. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: If confirmed as a District Court judge, I would be bound by and follow the Supreme Court's holding and analysis in *Roper* in combination with other applicable Supreme Court and Eleventh Circuit precedent.

a. **Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"**

Response: The Court observed in *Roper* that because the death penalty is the most severe punishment, "it must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" 543 U.S. at 568, quoting *Atkins v. Virginia,* 536 U.S. 304, 319 (2002). The Supreme Court's analysis of what offenders meet this standard of culpability draws on "history, tradition, and precedent" as well as 'the evolving standards of decency that mark the progress of a maturing society'" which are referred to so as "to determine which punishments are so disproportionate as to be cruel and unusual." 543 U.S. at 560-61, quoting *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)(plurality opinion). If confirmed as a District Court judge, I would be bound to follow the holding of *Roper* and other relevant binding precedent of the Supreme Court and the Eleventh Circuit.

b. **How would you determine what the evolving standards of decency are?**

Response: If confirmed as a District Court judge, I would apply established statutory law and Supreme Court and Eleventh Circuit Court of Appeals precedent regarding imposition of the death penalty.

c. **Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has sustained the constitutionality of the death penalty as a form of punishment as a general matter in a variety of contexts. If confirmed as a District Court judge, I would be bound by and apply these precedents.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00915 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.831

d. What factors do you believe would be relevant to the judge's analysis?

Response: If confirmed as a District Court judge, I would strictly follow precedent of the Supreme Court and the Eleventh Circuit Court of Appeals and the factors set forth in such precedent.

8. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, it would not be proper for a judge to do so except to the extent that precedent of the Supreme Court and the applicable Court of Appeals required otherwise.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No, a federal judge should not engage in such an examination, except if directed to do so by applicable Supreme Court or Court of Appeals precedent.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed as a District Court Judge, I would not consider foreign law unless explicitly required to do so by binding Supreme Court and Eleventh Circuit precedent.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I am not aware of any such circumstances. A federal judge has a duty to apply and implement the law of the United States.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, I would not do so except to the extent that binding precedent of the Supreme Court and the Eleventh Circuit Court of Appeals required otherwise.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00916 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.832

Responses of Amy Totenberg
Nominee to be United States District Judge for the Northern District of Georgia
to the Written Questions of Senator Jeff Sessions

1. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

   a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

   Response: I believe that the Sentencing Guidelines are entitled to significant deference in any sentencing decision and should be considered presumptively applicable.

   b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

   Response: Yes.

   c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

   Response: If confirmed as a District Judge, I would review a defendant's request to depart from the guidelines first with the understanding that the guidelines should be presumptively applicable. I would consider relevant Supreme Court and Eleventh Circuit precedent in determining whether an individual case presented special circumstances that warranted departure. *See, e.g., Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007); *United States v. Clay*, 483 F.3d 739 (11th Cir. 2007). I would then determine how these circumstances compared to other downward sentencing departure district court decisions reviewed by the Eleventh Circuit.

2. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people."**

   a. **Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

   Response: Judges should base their decisions solely on the law and facts as presented.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

   Response: No.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

3. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court's decisions in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010) clearly hold that that the Second Amendment confers an individual right.

a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court's decisions in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010) indicate that a right under the Second Amendment should be treated in the same manner as any other right explicitly identified under the Bill of Rights. Under this precedent, the core protection conferred by the Second Amendment should not be treated as a "watered-down" right or one subject to judicial "interest-balancing." *McDonald v City of Chicago*, 130 S.Ct. at 3048-3050; *District of Columbia v. Heller*, 128 S.Ct. at 2821.

4. What is your view of the role of a judge?

Response: The role of a District Court judge is to apply applicable statutory law and binding precedent of the Supreme Court and the Court of Appeals to the facts of each specific case before him or her in an impartial and thorough manner and to render decisions in a reasonable time frame, consistent with the requirements of law.

5. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: Based on established Supreme Court precedent, my view is that the death penalty does not constitute cruel and unusual punishment under the Constitution except under narrow circumstances, such as those addressed in *Roper v. Simmons*, 543 U.S. 551 (2005) (for defendants who committed crimes before the age of 18) and *Atkins v. Virginia*, 536 U.S. 304 (2002) (for defendants determined to be mentally retarded).

6. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00918 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.834

Response: Consistent with my response to Question #5 above, my view is that the death penalty is a legally acceptable form of punishment except in those particular case circumstances exempted from the death penalty by binding precedent of the Supreme Court or the Court of Appeals or where the death penalty is not authorized by applicable statutes.

7. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Department of Justice on September 22, 2010 and proceeded to draft my responses with careful attention devoted to each question. I subsequently discussed the questions with Department of Justice staff. I thereafter finalized my responses and forwarded these to the Justice Department for transmission to the Committee.

8. Do these answers reflect your true and personal views?

Response: Yes.

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00919 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC

66720.835

"ONS FOR THE RECORD

30 Bank Street
PO Box 350
New Britain, CT 06050-0350
06051 for 30 Bank Street
(860)223-4400
fax (860)223-4488

June 29, 2010

The Honorable Patrick Leahy
433 Russell Building
United States Senate
Washington, DC 20510-4502

Dear Senator Leahy:

I am pleased to inform you that the Federal Judiciary Committee of the Connecticut Bar Association (CBA) has voted to rate Susan L. Carney, the President's nominee for the U.S. Court of Appeals for the Second Circuit, as "qualified" by a unanimous vote.

The 12 members of the CBA's Federal Judiciary Committee are charged with the responsibility of evaluating and reporting on the suitability of Connecticut candidates for service on the Federal Bench. The committee rates all such federal judicial nominees as either "qualified" or "not qualified."

The committee reviewed and discussed the nominee's background and qualifications and interviewed Attorney Carney on June 25, 2010. Once the committee determined that no further information or interviews were required, it voted on Attorney Carney's qualifications.

The CBA appreciates the opportunity to comment and participate in the judicial nominee review process. The CBA looks forward to Attorney Carney's successful confirmation and to her service to the public and legal community as a judge on the Second Circuit Court of Appeals.

Very truly yours,

Francis J. Brady
President, Connecticut Bar Association

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 15, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
September 15, 2010

Today we welcome to the Committee six of President Obama's highly qualified nominees to fill some of the growing number of vacancies on the federal bench. I thank Senator Durbin for chairing this important hearing today which includes two nominees from his home state of Illinois. I also thank our Ranking Member, Senator Sessions, for his cooperation and that of his staff in working with us to continue to make progress with the confirmation hearing today and with additional hearings later this month.

Each of the nominees before us today has strong support. Senator Dodd and Senator Lieberman support the nomination of Susan Carney of Connecticut to the Second Circuit. Amy Totenberg, nominated to the Northern District of Georgia, has the support of her home state Senators, both Republicans, Senator Chambliss and Senator Isakson. Of course Senator Durbin, along with Senator Burris, strongly support the two nominees to the Central District of Illinois, Justice Sue Myerscough and Judge James Shaddid , who are appearing before the Committee today. I note that Justice Myerscough is finally getting a hearing before the Committee, 15 years after she was first nominated to the Federal bench. Congressman Aaron Schock, the Republican Congressman who represents the home district of both nominees, has also come over from the House to introduce the nominees today.

We also welcome to the Committee today Congresswoman Eleanor Holmes Norton of the District of Columbia, who is here to introduce the two nominees to the D.C. district court James Boasberg and Amy Jackson. We have two more nominations to fill vacancies on that court pending on the Committee's agenda this week. I hope we can report those nominations favorably tomorrow.

These nominations demonstrate how President Obama continues to work with Senators from both sides of the aisle to identify qualified nominees to fill vacancies on the Federal bench. In light of the broad bipartisan support we have seen for most of judicial nominations it is surprising and extremely disappointing that Republican obstruction in the Senate has led to so few confirmations and to the growing judicial vacancy crisis in this country.

66720.837

I hope that in light of the skyrocketing vacancies on the Federal courts, we can proceed without delay to consider the nominees before us today as well as the many still pending on the Senate's Executive Calendar. The cooperation of Senator Sessions has led us to make consistent progress in Committee holding confirmation hearings and reporting nominations promptly to the Senate floor. Regrettably, we have not seen similar cooperation by the Senate's Republican leadership which instead has insisted on months of delay before agreeing to vote on judicial nominations that are confirmed unanimously and refused to consider many others. This serves no good purpose. This obstruction is wrong. I have called for it to end, but the Republican Senate leadership persists in their practice.

One recent example is the nomination of Jane Stranch of Tennessee to the Sixth Circuit. Last year, Senator Sessions and I worked to have the nomination reported by the Committee in a prompt manner. Ms. Stranch had the support of her home state Senators, both Republicans, and was reported by this Committee with strong bipartisan support. Yet it still took nearly 10 months before her nomination came to a vote because of obstruction by the Senate Republican leadership. Early this week, we were finally able to consider her nomination and it was confirmed again with broad bipartisan support. There is no excuse for the Senate not to now be allowed to turn to the many other judicial nominations that remain stalled on the Executive Calendar, nearly all of whom were reported unanimously by this Committee.

Several recent newspaper articles have discussed the judicial vacancy crisis that has been created by the Republican strategy of slow-walking the Senate's consideration of noncontroversial nominations. These include many nominees who, when they finally get a vote after waiting months and months and months, get a unanimous vote. These include nominees who have the strong support of Republican home state Senators, yet still have required cloture votes to proceed. These include district court nominations, which are traditionally considered without delays, and they have never been targeted for obstruction by Democrats or Republicans when they have been supported by their home State Senators. Yet, last year, the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. So far this year, we have confirmed only 29 more and achieved what one recent news story noted is the lowest number of confirmations in more than 40 years.

As I noted earlier this week during the Senate's consideration of the Stranch nomination, Justice Anthony Kennedy--a Justice nominated by a Republican President-- spoke last month at the Ninth Circuit conference about the cost of skyrocketing judicial vacancies not only in California but throughout the country. He said, "It's important for the public to understand that the excellence of the federal judiciary is at risk." He further noted that, "If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled." I hope all Senators will heed Justice Kennedy's serious warning because he is absolutely correct. We should not let partisan calculations stand in the way of doing our job for the American people.

We have fallen well off the pace we set for nominations in 2001 and 2002. By this date in 2002, a Democratic Majority in the Senate had confirmed 77 of the circuit and district court nominations of President Bush, a Republican President. The Democrats had been in charge for only 13 months and we already confirmed 77. In stark contrast, to date we have confirmed only 41 of President Obama's circuit and district court nominations. I had hoped to make progress

before the recess, but Republicans permitted us to confirm only four noncontroversial nominations as the Senate wrapped up, objecting to an even greater number of nominations favorably reported by this Committee—five—and sending them back to the President. As a result, 16 judicial nominations remain stalled on the Executive Calendar today, all of which could easily be considered and confirmed.

The Senate has taken more than five times as long to consider President Obama's circuit court nominations reported by the Committee than we did to consider President Bush's during his first 2 years in office and it has taken three times as long to consider his district court nominations, nominations that are almost never controversial. It is not fair to the bipartisan work of this Committee for the Senate Republican Leadership to continually obstruct and delay nominations. It is not fair to the nominees. They can't go forward with their lives while this is pending. They have a law practice. Everything is on hold for month after month after month. But most of all, it is not fair to the American people who rely on the federal courts to provide Justice and are harmed by the backlogs created by having one in eight federal judgeships vacant.

I hope that we do better with the highly qualified judicial nominees before us today.

Susan Carney of Connecticut has been nominated to fill one of three vacancies on the Second Circuit. After working for 17 years in private practice, she served as Associate General Counsel of the Peace Corps and is currently the Deputy General Counsel of Yale University. Ms. Carney graduated cum laude from Harvard College and earned her J.D. magna cum laude from Harvard Law School.

President Obama nominated Amy Mil Totenberg to sit on the Northern District Court of Georgia. Ms. Totenberg is currently in private practice in Atlanta and also serves as a Special Master for the U.S. District Court for the District of Maryland and as a Court Monitor, and has served as a Court-Appointed Mediator for the U.S. District Court for the District of Columbia. Previously, Ms. Totenberg was general counsel to the Atlanta Board of Education, a part-time municipal court judge, and a partner at The Law Project. She graduated magna cum laude from Harvard College and earned her J.D. from Harvard Law School. If confirmed by the Senate, she would fill one of four vacancies on the district court in the Northern District of Georgia.

Justice Sue Myerscough has been nominated to the Central District of Illinois. She currently serves on the Fourth District Appellate Court of Illinois and previously served on the Seventh Judicial Circuit of Illinois. She is also an adjunct associate professor in the Department of Medical Humanities at the Southern Illinois University School of Medicine. Prior to becoming a judge, she worked in private practice for six years. Justice Myerscough earned her undergraduate degree, with honors, and her law degree from Southern Illinois University.

Judge James Shadid has also been nominated to the Central District of Illinois. He is a judge on the Tenth Judicial Circuit of Illinois and was previously a sole practitioner, a part-time commissioner on the Illinois Court of Claims, and a part-time Assistant Public Defender in the Peoria County Public Defender's Office. Judge Shadid was briefly a law partner in private practice and early in his career he also worked part-time at the Office of the Attorney General of Illinois. When he was appointed to serve as a state judge, Judge Shadid became the first Arab-

66720.839

American judge in Illinois. If confirmed, he will be the only federal Arab-American judge in the state, and one of only a handful of Arab-American federal judges in the country. Judge Shadid graduated from Bradley University and John Marshall Law School.

Amy Berman Jackson has been nominated for a seat on the District Court for the District of Columbia. She is a partner in private practice and previously served six years as an Assistant U.S. Attorney for the District of Columbia, in the district to which she has now been nominated to the bench. Ms. Jackson graduated, cum laude, from Harvard College and cum laude from Harvard Law School.

Judge James E. "Jeb" Boasberg is nominated to the U.S. District Court for the District of Columbia. He was appointed to his current seat as a judge on the District of Columbia Superior Court by President George W. Bush in 2002. Judge Boasberg has also worked as a Federal prosecutor and in private practice. He graduated, magna cum laude, from Yale College, earned a graduate degree from Oxford University and received his law degree from Yale Law School.

I welcome the nominees and their families to the Committee today.

###

NEW YORK CITY BAR

COMMITTEE ON THE JUDICIARY

ELIZABETH DONOGHUE
CHAIR
15 MAIDEN LANE, 17TH FLOOR
NEW YORK, NY 10038
Phone: (212) 349-3000
Fax: (212) 587-0744
edonoghue@hmgdjlaw.com

PETER M. KOUGASIAN
VICE CHAIR
80 CENTRE STREET, ROOM 624
NEW YORK, NY 10013
Phone: (212) 815-0495
Fax: (212) 815-0498
pkougasian@specnarc.org

STEPHEN S. MADSEN
VICE CHAIR
825 EIGHTH AVENUE, 41ST FLOOR
NEW YORK, NY 10019
Phone: (212) 474-1886
Fax: (212) 474-3700
smadsen@cravath.com

STEPHANIE G. WHEELER
SECRETARY
125 BROAD STREET
NEW YORK, NY 10004
Phone: (212) 558-7384
Fax: (212) 291-9166
wheelers@sullcrom.com

ELIZABETH DORFMAN
ADMINISTRATIVE ASSISTANT
42 W. 44TH STREET
NEW YORK, NY 10036
PHONE: (212) 382-6772
Fax: (212) 869-2145
edorfman@nycbar.org

September 22, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We are pleased to inform you that the Committee on the Judiciary of the New York City Bar has found Susan L. Carney, Esq. APPROVED for appointment to the United States Court of Appeals for the Second Circuit.

Very truly yours,

Elizabeth Donoghue
Chair

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary

VerDate Nov 24 2008 08:49 Jul 28, 2011 Jkt 066720 PO 00000 Frm 00925 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\66720.TXT SJUD1 PsN: CMORC
66720.841

Statement of Senator Joseph Lieberman
Regarding the Nomination of Susan L. Carney
to the United States Court of Appeals for the Second Circuit

September 15, 2010

Thank you, Chairman Leahy and Ranking Member Sessions, for allowing me to offer this statement in support of Susan L. Carney's nomination to serve on the United States Court of Appeals for the Second Circuit.

I commend President Obama's decision to nominate Ms. Carney to serve on the Second Circuit. With over three decades of legal experience, Susan Carney has ably served our country, the state of Connecticut, and the organizations she has worked for with honor and distinction.

Susan Carney's legal acumen and long career of devoted public service should make her a valuable addition to the Second Circuit. For the past twelve years, Susan Carney has served in Yale University's Office of the Vice President and General Counsel, most recently as Acting General Counsel and Deputy General Counsel. In this capacity, Ms. Carney is the second-ranking legal officer of a leading educational and research institution with an annual budget of more than $2 billion. Her portfolio includes a variety of complex areas covered by federal law, including scientific research, intellectual property, and health care. Ms. Carney has also managed the legal aspects of Yale's international affiliations and transactions in dozens of countries worldwide.

Prior to her work for Yale, Ms. Carney served as Associate General Counsel of the Peace Corps where she was twice honored for her outstanding service and contributions to the organization.

Ms. Carney has an impressive record of legal training and experience. She graduated from Harvard University with a Bachelors of Arts degree and went on to earn a law degree from Harvard, graduating *magna cum laude*. She served as a Law Clerk to Judge Levin Hicks Campbell on the United States Court of Appeals for the First Circuit before working in private practice with two law firms as an associate, partner, and founding partner. Ms. Carney has been admitted to practice in seven courts, including the U.S. Supreme Court, the U.S. Court of Appeals for the First Circuit, and the U.S. Court of Appeals for the Ninth Circuit and is a member of the Massachusetts, District of Columbia, and Connecticut bars. Ms. Carney also serves on the Board of Directors of the National Association of College & University Attorneys.

I am pleased that Susan Carney's nomination is proceeding through the confirmation process, and I look forward to working with you and the rest of our Senate colleagues to consider Susan Carney's nomination to the Second Circuit Court of Appeals.

Remarks by Congressman Aaron Schock to the U.S. Senate Judiciary Committee in Support of the Nomination of Judge James Shadid for U.S. District Judge

Thank you Senator Durbin and Members of the Committee for allowing me to share with you my reasons for enthusiastically supporting President Obama's nomination of state Circuit Court Judge James Shadid as a federal District Court Judge.

Jim Shadid is from my hometown of Peoria, Illinois, but that is not why I am here in support of his nomination. I want to make clear that my support is not perfunctory support for someone from my district.

I am here because state Circuit Court Judge James Shadid has been an outstanding Circuit Court Judge by every measure. In fact, he is a role model for what it takes to clear backlogged cases and efficiently running the courts. More importantly, he is also a role model for fairness, justice and protecting the public.

James Shadid has the perfect temperament to serve the public as a Judge. He comes to trials with no preconceived notions and is abundantly fair, has deep insights into the law, and has always ensured criminal defendants a fair trial. If and when those defendants have been found guilty, Judge Shadid's sentencing for violent criminals has been consistent—he is a tough, no nonsense, clear-headed judge who has handed down thoughtful, but tough sentences.

In a well known case in the Peoria area, a defendant was on trial for shooting a gun into a crowd at one of Peoria's high schools. The defendant was found guilty. Judge Shadid sentenced him to 24 years in prison. The sentence was appealed and the Appellate Court found that Judge Shadid "placed an undue emphasis on the fact that the shooting took place in a school," reversed the sentence and remanded the case back to Judge Shadid for re-sentencing. The appearance of the Appellate Court pressing Judge Shadid to go easier on the defendant's sentence was plain for all to see.

Judge Shadid carefully considered the Appellate Court's ruling, clarified the legal basis on the sentence and once again came down with a sentence of 24 years in prison for the defendant.

Our Circuit Court Misdemeanor Court was notoriously backlogged with cases for a very long time. The average turn-around time was eight months. Though he was in a position to focus on other, sometimes more interesting types of cases, Judge Shadid volunteered to step up and take on the mess. He swiftly eliminated the backlog and put in place a more efficient process that has radically improved the functioning of the Misdemeanor Court.

Judge Shadid goes above and beyond the call of duty by holding mock trials in partnership with local high schools. This has given students invaluable insight into the criminal justice system

and I personally know of many young people whose lives have been turned around by Judge Shadid's admirable efforts to help at-risk youth.

All in all, I do not believe it is possible to find a better person to serve as a federal Court Judge. I commend Senator Durbin for his recommendation of Judge Shadid and President Obama for nominating James Shadid to serve the public as a federal District Court Judge in Illinois.

I thank the Committee for your consideration.